

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

IN RE: CITY OF DETROIT, . Docket No. 13-53846  
MICHIGAN, .  
 . Detroit, Michigan  
 . May 15, 2014  
Debtor. . 10:00 a.m.  
 . . . . .

HEARING RE. (#3925) CORRECTED MOTION OF CREDITORS FOR  
ENTRY OF AN ORDER PURSUANT TO 105(a) OF THE  
BANKRUPTCY CODE DIRECTING THE DEBTOR TO COOPERATE WITH  
INTERESTED PARTIES SEEKING TO CONDUCT DUE DILIGENCE  
ON THE ART COLLECTION HOUSED AT THE DETROIT INSTITUTE  
OF ARTS; (#4557) MOTION TO COMPEL RESPONSES TO  
INTERROGATORIES; (#4508) ORDER REGARDING HEARING ON  
OUTSTANDING OBJECTIONS TO WRITTEN DISCOVERY; (#4202) STATUS  
CONFERENCE RE. PLAN CONFIRMATION PROCESS (FOURTH AMENDED  
ORDER ESTABLISHING PROCEDURES, DEADLINES AND HEARING  
DATES RELATING TO THE DEBTOR'S PLAN OF ADJUSTMENT)  
BEFORE THE HONORABLE STEVEN W. RHODES  
UNITED STATES BANKRUPTCY COURT JUDGE

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1 THE CLERK: All rise. Court is in session. Please  
2 be seated. Case Number 13-53846, City of Detroit, Michigan.

3 THE COURT: Good morning. Let's begin with the  
4 swearing in of a new attorney for the Bar of the Court. Are  
5 you Dana Kaufman?

6 MS. KAUFMAN: Yes.

7 THE COURT: Okay. Are you prepared to take the oath  
8 of admission to the Bar of the Court?

9 MS. KAUFMAN: Yes.

10 THE COURT: All right. Please raise your right  
11 hand. Do you affirm that you will conduct yourself as an  
12 attorney and counselor of this Court with integrity and  
13 respect for the law, that you have read and will abide by the  
14 civility principles approved by the Court, and that you will  
15 support and defend the Constitution and laws of the United  
16 States?

17 MS. KAUFMAN: Yes.

18 THE COURT: All right. Welcome.

19 MS. KAUFMAN: Thank you.

20 THE COURT: We'll take care of your paperwork for  
21 you. You're all set. One moment, please. Okay. Let's  
22 begin with the motion relating to the art, please.

23 MR. PEREZ: Good morning, your Honor. Alfredo Perez  
24 on behalf of FGIC. Your Honor, as the Court is aware, in  
25 November of last year we filed the first motion relating to

1 the art, and on November 22nd -- on January 22nd we had a  
2 hearing in which the Court denied that motion. In essence,  
3 the Court ruled that it didn't have authority under 105 and  
4 1102, and then it went on to state that even if it did have  
5 authority, it wouldn't grant the motion because it -- for  
6 several reasons. It deemed the motion to be premature at  
7 that point. The city was 37 days away from filing its plan.  
8 And the Court went on to say that once the city had filed its  
9 plan, that the treatment of the art would raise several  
10 issues, first of which was what was the city's interest in  
11 the art. Second, does the city meet the best interest test  
12 under 943(b)(7) with respect to whatever interest it had in  
13 the art? Third, the Court asked, you know, what role does  
14 the art play in the long-term revitalization of the city, and  
15 how does that affect the feasibility of the plan?

16 So, your Honor, now fast forward to May. The city  
17 has filed its plan. The transfer of the art is a central  
18 component of that plan. The DIA settlement pursuant to which  
19 the art is transferred is a central component of that plan,  
20 so we have clearly the issue of what's the city's interest  
21 and the best interest test. Additionally, your Honor, we  
22 have the city has its burden to meet its burden under Rule  
23 9019 with respect to the reasonableness and the fairness of  
24 the settlement. And, your Honor, we submit that the Court  
25 and the parties really can't inform the Court and have a real

1 meaningful discussion as to the fairness of the settlement  
2 whether the city has met the best interest test if we don't  
3 know what the value is of what's being conveyed. And there's  
4 no question, your Honor, but that the art --

5 THE COURT: Well, why isn't that by itself a  
6 sufficient grounds to object to the settlement and the  
7 confirmation?

8 MR. PEREZ: Well, your Honor, we have, but to the  
9 extent that the Court overrules that objection, we'd also  
10 like to present evidence with respect to what is the value of  
11 the art. And, your Honor, there's no question but that --

12 THE COURT: But you didn't answer my question.

13 MR. PEREZ: Well, your Honor --

14 THE COURT: My question is why isn't it sufficient  
15 to protect your client's interest to object to the settlement  
16 and the plan on the grounds that we don't know what the value  
17 of the art is?

18 MR. PEREZ: Well, your Honor, we actually have. I  
19 mean we're saying that they can't meet their standard because  
20 we don't know that, and the reason --

21 THE COURT: Okay. So why are we here?

22 MR. PEREZ: Because, your Honor --

23 THE COURT: Why do you need more than that?

24 MR. PEREZ: Because it would be -- it would be  
25 important for the Court and the parties to know what it is

1       that we're giving up. Okay.

2               THE COURT: Why?

3               MR. PEREZ: Right now --

4               THE COURT: Why?

5               MR. PEREZ: Well, I would surmise, your Honor, that  
6       if the art was worth \$4 billion free and clear, that would be  
7       a fact that I think would be meaningful and important for the  
8       Court to consider. It certainly would be meaningful and  
9       important for my client to present in the context of the  
10      confirmation hearing because what we're doing is there's a  
11      transfer for approximately \$500 million going to parties that  
12      aren't all the unsecured creditors. That's a different  
13      issue. That's not for today. But if it's \$5 billion, if  
14      it's worth \$4 billion, I think that's important to know. I  
15      think it -- I think that to the extent that there's any basis  
16      to say that this is a reasonable settlement, how can you make  
17      an assessment whether it's a reasonable settlement if you  
18      don't know what's being conveyed?

19              THE COURT: You just made the argument -- I asked  
20      you whether it was sufficient or not. You just said if we  
21      don't know what the value of the art is, how can we assess  
22      its reasonableness.

23              MR. PEREZ: Correct, your Honor.

24              THE COURT: And my question is why do we need more  
25      than that, or why do you need more than that?



1 MR. PEREZ: Well, because the Court may determine  
2 that that is sufficient, and so I would like to present  
3 evidence to show what, in fact, the true value of the art is.  
4 I think that's the main reason because I don't want to be  
5 caught without the ability to actually demonstrate to the  
6 Court what's being transferred.

7 So, your Honor, so we have best interest. We have  
8 the 9019 standard. And then to the extent that Class 9,  
9 which is the COPs, rejects the plan -- and right now we're  
10 basically being offered three cents on the dollar -- we also  
11 are going to have a best interest -- a fair and equitable  
12 test under 1129(b)(2) that they're going to have to meet. So  
13 after the hearing in January, we heard what the Court said,  
14 and we did basically three things. First, we served the  
15 subpoena with everyone on the DIA. We've been looking at  
16 documents. That addresses the first issue, which is what is  
17 their interest in the art. Second, because of LaSalle and  
18 the fact that the Supreme Court says market value is the best  
19 indication of what the real value is, we tasked Houlihan to  
20 do what they did. Second, your Honor -- and the main reason  
21 we did that was really predicated -- or one of the reasons we  
22 did it was predicated on the Christie's appraisal.  
23 Christie's looked at 2,700 pieces. They appraised 1,700  
24 pieces. They had a range of 454 to 867. That's almost a  
25 hundred-percent difference swing. How could that be helpful

1 to the Court where you have basically a hundred-percent swing  
2 in the value? So we thought that in order to get a more  
3 precise determination of what the market value is, you really  
4 needed to see what the market would indicate. Houlihan put  
5 in a tremendous --

6 THE COURT: So do I understand correctly by your  
7 argument here that it is not the creditors' intent here to  
8 force or insist that the city sell this art?

9 MR. PEREZ: Your Honor, correct. Correct. We have  
10 not filed anything. Whether that ultimately occurs, I don't  
11 know, but we're looking at this in the context of what is the  
12 true market value of what's being conveyed pursuant to the  
13 plan and what are they getting in return. So Houlihan --

14 THE COURT: So your agent, Houlihan, has solicited  
15 these, I guess, expressions of interest is the --

16 MR. PEREZ: Correct.

17 THE COURT: -- best way to phrase it, presumably  
18 knowing that they're never actually going to get the art?

19 MR. PEREZ: Well, your Honor, I don't know that I  
20 would go so far as to say -- I mean the -- we attached what  
21 we sent out, so the Court saw that.

22 THE COURT: Well, the city has said they're never  
23 going to sell the art.

24 MR. PEREZ: The city has indicated currently that  
25 it's not going to sell the art. The city in the June 14th

1 plan said that it was looking at all options to monetize the  
2 art, so the city currently and the plan currently doesn't --  
3 well, I think it does include a sale because you're, in  
4 essence, transferring it for consideration. You're  
5 transferring it, and it's very interesting what they say in  
6 the disclosure statement. The purpose for the transfer is to  
7 shield it from third-party creditors of the city. It says  
8 that point blank in the disclosure statement. That's a  
9 classic -- you know, they're trying to get it so that no  
10 creditor could ever have a call on it. Now, they wouldn't  
11 have said that if they didn't mean it, so Houlihan was able  
12 to go out on the basis of publicly available information.

13 THE COURT: What rights do creditors have to this  
14 art outside of bankruptcy?

15 MR. PEREZ: Well, that's a good question, your  
16 Honor, and that's going to be the subject of a bunch of  
17 testimony at the confirmation hearing. In essence, your  
18 Honor, we believe that in the context of -- if we were  
19 outside of bankruptcy and we had a judgment and the city felt  
20 that it couldn't satisfy the judgment on the basis of raising  
21 the tax rate, that the smart decision would be to sell  
22 noncore assets.

23 THE COURT: A smart decision, but that wasn't  
24 exactly my question. My question was a legal question.

25 MR. PEREZ: Your Honor, I am not prepared to say

1 that the city's noncore assets could not be subject to use  
2 for satisfaction. I think that most of the cases say that  
3 that's not a remedy. Most of the cases say that your only  
4 remedy is to submit the judgment to the finance director, and  
5 they would have to do it. But the City of Detroit has sold  
6 many --

7 THE COURT: It's your position that this art is  
8 quote, unquote, noncore?

9 MR. PEREZ: That's correct, your Honor. It is my  
10 position on that. And as the Court is aware --

11 THE COURT: The city probably doesn't agree with you  
12 on that.

13 MR. PEREZ: They may or they may not agree, and they  
14 may have agreed with me back in June 14th, and they may not  
15 agree with me now because certainly on June 14th it was on  
16 the table.

17 THE COURT: Did your client -- or was there a single  
18 bondholder who, when agreeing to do business with the city on  
19 whatever basis it did or purchasing art -- purchasing bonds  
20 or debt of the city, thought about art, knew about the art,  
21 contemplated the art, was aware of the art?

22 MR. PEREZ: I have no indication that my client had  
23 any knowledge of that at the time.

24 THE COURT: Was it mentioned in any offering  
25 circular, any balance sheet, any prospectus?

1 MR. PEREZ: I can't say, your Honor, but I would  
2 doubt that.

3 THE COURT: Are these important considerations?

4 MR. PEREZ: I don't believe so, your Honor. I don't  
5 believe so because if the city had -- if at the time that we  
6 had -- we did our transactions with the city back in 2005 and  
7 2006, you know, the balance sheet didn't reflect that there  
8 was any cash on the balance sheet, but tomorrow there was \$4  
9 billion on the balance sheet, cash or marketable securities,  
10 it may not have been in the offering circular, but that's an  
11 asset of the city that we could look for for satisfaction, so  
12 I don't think those are key considerations.

13 So, your Honor, Houlihan went out there. Based on  
14 publicly available information, we had -- at the time we had  
15 not gotten anything from the DIA. What we've gotten by the  
16 DIA is subject to a confidentiality agreement, so we haven't  
17 shared anything with Houlihan -- and got these indications of  
18 interest. The Christie's report, by the way, made several  
19 recommendations as to how to monetize the assets.

20 THE COURT: Pause one second. Why is what you've  
21 gotten from the DIA subject to a confidentiality agreement?

22 MR. PEREZ: Because that's the condition pursuant to  
23 which we were allowed to see it. I think there are two  
24 components of the confidentiality agreement. One is the  
25 personally identifiable information of donors, which I think

1 everybody agrees is --

2 THE COURT: Okay.

3 MR. PEREZ: -- not an issue.

4 THE COURT: Fair enough.

5 MR. PEREZ: I think there's a second component that  
6 we maybe end up coming back to talk to you about, but the  
7 personal identification --

8 THE COURT: Okay.

9 MR. PEREZ: -- of donors I think --

10 THE COURT: But what's the other piece? Does it  
11 cover everything else?

12 MR. PEREZ: Well, it covers -- yeah. It basically  
13 covers everything else. I mean there's a protocol about how  
14 we can use it, so it's not like we won't ever be able to use  
15 it, but I think out of an abundance of caution -- and I don't  
16 fault the DIA for that at all. I mean I'm not complaining in  
17 the least. They were concerned that there might be some  
18 personally identifiable information of some of the donors.

19 THE COURT: That part is fine.

20 MR. PEREZ: Yeah. So --

21 THE COURT: All right. If we have to deal with it  
22 in the future, we will, but, you know, if these are documents  
23 relating to public assets, I just wonder why those documents  
24 themselves wouldn't be public or at least publicly available.

25 MR. PEREZ: We chose the path of least resistance --

1 THE COURT: All right.

2 MR. PEREZ: -- with respect to that.

3 THE COURT: Fair enough.

4 MR. PEREZ: So Christie's report said one of the  
5 ways to monetize it would be through a loan. One of the  
6 proposals that we have is a loan for \$2 billion, four times  
7 the consideration that's being given currently, and the  
8 Court -- I mean everybody says 816, but it's really about a  
9 little bit less than 500 million that's actually coming.  
10 Second, your Honor, we have a proposal for the sale of the  
11 art, and then we have two other proposals for pieces,  
12 including one that's only for 116 pieces, potentially a  
13 billion five, three times the -- three times the amount of  
14 the DIA settlement, three times the amount. Your Honor, when  
15 our client looks like it's going to get about total  
16 consideration over 20 years under the plan of maybe 60, \$80  
17 million on a billion four, I just don't know how you can say  
18 that you can't look -- determine whether this asset is  
19 available, one, and, two, determine whether the city has met  
20 the best interest test, whether they've satisfied the  
21 standards under 9019, or whether it -- you know, they've  
22 satisfied the fair and equitable standard if you don't know  
23 what it is on the other end. You just have to know.

24 THE COURT: The DIA is concerned about the potential  
25 and the risk of damage to the art.

1 MR. PEREZ: Your Honor, absolutely valid concern.  
2 We are prepared to work with any reasonable restrictions on  
3 that. I think that the -- that is really -- it's a red  
4 herring, your Honor. These are all very, very --

5 THE COURT: I'm not quite sure the DIA would agree  
6 with you on that.

7 MR. PEREZ: Well, your Honor, they may not agree,  
8 but I think at the end of the day if we're allowed to go  
9 forward, the Court would determine that it is basically a red  
10 herring. These are all very sophisticated people. They are  
11 all people in the business. These aren't like somebody  
12 coming off the street. And they would be able to satisfy any  
13 reasonable concern that the DIA may have.

14 THE COURT: We don't really have any evidence of who  
15 these people are, do we?

16 MR. PEREZ: Well, your Honor --

17 THE COURT: I mean we have a bunch of LL --

18 MR. PEREZ: -- yes and no. Yes and no.

19 THE COURT: We have a bunch of LLC names.

20 MR. PEREZ: Yes and no. And Mr. Spencer is here and  
21 prepared to testify to the extent the Court -- you know,  
22 there's an issue as to that evidence. He did put in a  
23 declaration. In his declaration he said that these were, in  
24 essence, reputable people and that -- and also, your Honor,  
25 that we were only scratching the top, the tip of the iceberg



1 in terms of what the value is here, so he's here. He's  
2 prepared to testify to the extent that's an issue. I don't  
3 think certainly the --

4 THE COURT: He doesn't really explain why it's  
5 necessary to remove the art from the walls to accomplish what  
6 you and your client -- and your clients and the other movants  
7 want to do here, does he?

8 MR. PEREZ: He does not, and remember, your Honor,  
9 that was -- that came in as a result of the Court's order to  
10 be more specific in terms of what the order would be, and,  
11 frankly, the reason we put the order in a general fashion is  
12 because we anticipated that we would have negotiations with  
13 the DIA about what it was that we were doing. The only  
14 reason --

15 THE COURT: Well, let me just ask why is it that  
16 removal from the walls is necessary to accomplish your  
17 ultimate goals here?

18 MR. PEREZ: Your Honor, we went back to the bidders,  
19 if you will, and they indicated that in order to determine  
20 the authenticity that they really would have to inspect.

21 THE COURT: Is there doubt about that?

22 MR. PEREZ: I don't think so, but --

23 THE COURT: Then why is it necessary?

24 MR. PEREZ: Well, I think it's necessary, your  
25 Honor -- and, again, we would -- this would be a subject of

1 negotiation, but what we were told -- what we were told, your  
2 Honor, the reason it was necessary is because in order to  
3 appraise it in a way that you're going to make a firm bid,  
4 you really need to inspect it. And, frankly, the DIA agrees  
5 with that. In their papers they say if it were going to be  
6 sold, somebody would have to inspect the front and back.  
7 They don't contest that, your Honor, that that's needed, so  
8 to the extent -- and it's not 12,000 pieces. I mean we  
9 specifically put 3,000, and it's not 12,000. I mean there's  
10 a parade of horrors in the DIA's filing that I think are  
11 just complete red herrings, your Honor.

12 THE COURT: Would you include in that the disruption  
13 to the museum's operations?

14 MR. PEREZ: Your Honor, no, no, and we've been very  
15 cognizant of that. And I think it could be done in a way  
16 that it doesn't disrupt the museum.

17 THE COURT: How would that be? Nights and Mondays?

18 MR. PEREZ: Nights and Mondays or, you know, in a  
19 way that only one person is there at a time. Right now, your  
20 Honor, we've got people there. It's three people from set  
21 times. There's not a lot of people. There's not a lot of --  
22 there's not a lot of disruption at all, and we've met  
23 every -- literally every condition that the DIA has imposed  
24 upon us, and I have no doubt but that any of these potential  
25 interested parties would also meet every condition, so,

1 again --

2 THE COURT: Paying for overtime?

3 MR. PEREZ: Paying for overtime? We'd have to pay  
4 for overtime, yes, your Honor. Yes, absolutely. I mean  
5 we're paying now for the -- for all of the copying and, you  
6 know, the special handling and copying and all of that.  
7 We're paying for that right now.

8 THE COURT: Okay.

9 MR. PEREZ: So it's not -- and, you know, to the  
10 extent there's a question there, to the extent these are the  
11 city's assets, whether we should be doing it, but, again, we  
12 took the path of least resistance with respect to that. So  
13 for all those reasons, your Honor, I think that we would  
14 request that the Court enter an order granting the motion  
15 obviously subject to a further discussion with the DIA about  
16 how something like this could be done. Thank you.

17 THE COURT: Okay.

18 MR. KIESELSTEIN: Good morning, your Honor.

19 THE COURT: Sir.

20 MR. KIESELSTEIN: Marc Kieselstein, Kirkland &  
21 Ellis, on behalf of Syncora. Your Honor, we filed a joinder  
22 to FGIC's motion. I don't want to repeat what Mr. Perez  
23 said. I rise briefly to make a few additional points if --

24 THE COURT: Go ahead.

25 MR. KIESELSTEIN: -- that's all right. Your Honor,

1 first on exclusivity, your Honor, I know the city said in its  
2 response papers they viewed this as an encroachment on  
3 exclusivity. Obviously we disagree with that. As far as  
4 we're concerned, the city has exclusivity today. They have  
5 exclusivity tomorrow. They have exclusivity forever. You  
6 know, we get that, that that's how this works in Chapter 9.  
7 And if Mr. Orr and the city are bound and determined not to  
8 even look this gift horse in the mouth to see if it's  
9 Secretariat on the one hand or a broken-down nag on the  
10 other, we don't like it.

11 THE COURT: Well. hold on. "Gift horse" is a little  
12 bit of an exaggeration.

13 MR. KIESELSTEIN: Well, we don't know.

14 THE COURT: It's not a gift.

15 MR. KIESELSTEIN: It's not a gift, but it's an --

16 THE COURT: It's not a gift.

17 MR. KIESELSTEIN: It's an opportunity to generate  
18 potentially a great deal more proceeds than what's on the  
19 table, potentially. We don't know, and that's part of the  
20 point.

21 THE COURT: Fair enough, but that doesn't make it a  
22 gift horse.

23 MR. KIESELSTEIN: Well, it may be the broken down  
24 nag variety, Judge. We don't know, but you're absolutely  
25 right. But if that's the city's position, we're powerless to

1 change that, and we understand that, which leads to my second  
2 point. And, Judge, that's that, in our view, not only best  
3 interest but fair and equitable tests, confirmation are  
4 implicated by how the city chooses to proceed here or chooses  
5 not to proceed, and we, in our view, believe that they have a  
6 duty to take all reasonable steps to minimize creditor  
7 losses, and that's a confirmation issue.

8 THE COURT: Okay. Okay. Let's just pause right  
9 there.

10 MR. KIESELSTEIN: Sure.

11 THE COURT: And I'm going to ask you the same  
12 question I asked Mr. Perez. Why isn't it sufficient to  
13 protect your client's interest to argue that the city's  
14 refusal to do what you just said it had a duty to do means  
15 they can't meet their burden of proving fair and equitable  
16 and best interest of creditors and, therefore, the plan  
17 should not be confirmed? Why isn't that sufficient?

18 MR. KIESELSTEIN: That's an argument, no doubt, your  
19 Honor, and the question I think is whether at this stage of  
20 the proceeding we need to decide which argument -- which of  
21 our arguments is the better argument. If I knew, for  
22 instance, there would be an adverse inference drawn from the  
23 city's declining this opportunity sort of in the rule of  
24 evidence sense that if a document is not produced, you then  
25 draw an adverse inference against the party that didn't

1 produce it, that would be one thing, but the city has  
2 exceptionally skilled counsel here, and I think I can safely  
3 predict what we will hear if this baby is smothered in the  
4 cradle, so to speak, at confirmation. I expect we will hear,  
5 Judge, that kid would never have amounted to anything anyway,  
6 and anyone who suggests otherwise is exercising in sheer  
7 conjecture. And if we're in the state of saying what might  
8 have been, we will be speculating. Now, if that speculation  
9 is going to be inferred against the city, that's one thing,  
10 but I don't know that standing here today, and so it's  
11 important. We may lose our argument about what might have  
12 been if we go forward on this motion and it turns out these  
13 deals are not real. That's a risk, I think, FGIC and the  
14 other COP holders are willing to take, and the reason we're  
15 willing to take it is because based on what we've seen, we  
16 think there's more upside in pursuing this than downside in  
17 losing this argument that your Honor has rightly raised.  
18 Just, you know, keep in mind, your Honor, that to us the  
19 grand bargain is not so grand. For us the grand bargain is  
20 more grandiose than grand because we're not getting anything  
21 out of this bargain. We have our nose pressed up against the  
22 glass. Other people are clinking glasses and shaking hands,  
23 and we're not getting anything out of it, so we would like to  
24 pursue this alternative. And, candidly, if it was pursued,  
25 one out of two things would happen, Judge. Either these

1 options would prove out and prove to be real, and that would  
2 be meaningful information in terms of best interest and fair  
3 and equitable and 9019, or, two, as the city suggests, these  
4 might prove to be illusory, in which case it would be  
5 meaningful information on best interest, fair and equitable,  
6 and 9019. And, again, we're willing to take that risk. And  
7 at first we didn't candidly understand why a fiduciary would  
8 not want to know if the answer is behind door number one or  
9 door number two, but --

10 THE COURT: Is the city a fiduciary?

11 MR. KIESELSTEIN: Is the city a fiduciary? Well,  
12 perhaps not a formal fiduciary, but they do have this duty to  
13 minimize creditor losses, so if that's six -- maybe that's  
14 six of one, half dozen of the other. I'm not exactly sure.  
15 But I believe they do have that duty, and so we were  
16 struggling, frankly, to understand why no one wanted to know  
17 the answer to this question, and it's occurred to us as we've  
18 gone through this that even if that seems to be perhaps  
19 economically irrational behavior, that the art lies on a much  
20 higher plane than rationality. We know this is a world-class  
21 collection.

22 THE COURT: Well, is there a single case out there  
23 that holds that a municipality in Chapter 9 has an  
24 unconditional right -- an unconditional obligation to  
25 minimize creditor losses?

1 MR. KIESELSTEIN: We think the case law, Fano and  
2 other Chapter 9 cases, say that that's exactly what the city  
3 has to do.

4 THE COURT: What about the obligation to provide  
5 city services?

6 MR. KIESELSTEIN: And I understand, your Honor, and  
7 that goes to whether this is a core asset or not a core  
8 asset. And we obviously have some --

9 THE COURT: Okay. So you agree there isn't an  
10 absolute unconditional obligation --

11 MR. KIESELSTEIN: It's not an absolute --

12 THE COURT: -- to minimize creditor losses.

13 MR. KIESELSTEIN: -- certainly not an absolute --

14 THE COURT: Okay.

15 MR. KIESELSTEIN: -- certainly not an  
16 unconditional --

17 THE COURT: All right.

18 MR. KIESELSTEIN: -- obligation. Our view of it is  
19 that at least in terms of one step at a time, having this  
20 information would be useful to the city. You asked Mr.  
21 Perez, you know, outside of bankruptcy or even inside of  
22 bankruptcy can you force the city to sell this. I believe  
23 the answer to that question is no, but that doesn't mean  
24 that, one, if circumstances change, the city's position  
25 wouldn't change. If, for instance, they --



1 THE COURT: Well, but if the answer to the question  
2 is no outside of bankruptcy, why should creditors do better  
3 inside of bankruptcy?

4 MR. KIESELSTEIN: Well, outside of bankruptcy --

5 THE COURT: That's a little bit of topsy-turvy.

6 MR. KIESELSTEIN: Well, I don't think so, your  
7 Honor, because outside of bankruptcy we have other remedies  
8 that the automatic stay and the discharge that will --

9 THE COURT: Like what?

10 MR. KIESELSTEIN: Like the Revised Judicature Act  
11 and the ability to get a judgment. That is something we  
12 talked about in our objection, and I know there is --

13 THE COURT: A judgment is a piece of paper.

14 MR. KIESELSTEIN: Well --

15 THE COURT: What does that get you?

16 MR. KIESELSTEIN: Your Honor, I think one of the  
17 urban legends populating this case is that there would be a  
18 chaotic race to the courthouse of thousands of creditors and  
19 the boat would tip over to one side, and it's not an issue  
20 for today, but we will -- intend to show at confirmation that  
21 that, in fact, would not play out, number one, and, number  
22 two, when you're getting a notional ten cents -- Mr. Perez  
23 referred to it as three cents --

24 THE COURT: What's your best case scenario outside  
25 of bankruptcy?

1 MR. KIESELSTEIN: I think it --

2 THE COURT: You get a judgment. Then what?

3 MR. KIESELSTEIN: I think the city's revenues, which  
4 we think are understated under their forecast, would be  
5 sufficient when you take into account what the monthly nut is  
6 for the city, who's accelerated and who's not. We think we  
7 do orders of magnitude better than what's in the plan.

8 THE COURT: Okay. Why isn't it sufficient --  
9 legally sufficient to argue that in lieu of all of this art?

10 MR. KIESELSTEIN: I don't think I have to elect my  
11 remedies or my arguments at this stage, your Honor,  
12 respectfully. I think we have a panoply of arguments. They  
13 have the burden on every element. We hope to win one, your  
14 Honor, and whether it's that one or a different one, we're  
15 indifferent. We think we should win them all, but we're not  
16 objective, so you would expect me to say that. So, you know,  
17 the last point I want to make --

18 THE COURT: I won't hold you to that.

19 MR. KIESELSTEIN: Okay. I appreciate that, your  
20 Honor. Anytime people don't hold me to stuff, I really  
21 appreciate it. Your Honor, the last point I want to make is  
22 we understand, you know, how important the art is to the city  
23 in terms of it's part of its cultural heritage. It's a  
24 glittering link to the glory days of Detroit. Any creditor  
25 who is not acknowledging that is cold, unfeeling, and stupid,

1 and we hope we're none of those three things. That said --  
2 and based on that, we can only imagine the pressures that the  
3 city and Mr. Orr have been under with respect to the art. We  
4 can only imagine what may have been said under the mediation  
5 code of silence on this subject, and we get that, but in  
6 bankruptcy when you invoke the Court's jurisdiction, some of  
7 those rarified things, some of those edifying things have to  
8 yield to things that are perhaps more base, perhaps more --  
9 you know, some people would even say sort of grubby, and that  
10 is the requirement to try and minimize the losses of your  
11 creditors. We think proceeding on this motion would allow us  
12 to flesh that out. We may gain a stronger argument. We may  
13 find out we have a weaker argument, but we think in the  
14 absence of the city's willingness or ability to go down this  
15 road, we should be able to do it. I'd say FGIC -- they've  
16 done the heavy lifting here -- should be able to do that with  
17 the city's reasonable assistance, and we would ask that the  
18 motion be granted.

19 THE COURT: Thank you, sir.

20 MR. KIESELSTEIN: Thank you.

21 THE COURT: Anyone else to speak in favor of the  
22 motion? All right.

23 MR. BENNETT: Your Honor, can I have one minute to  
24 speak to my colleague about one point?

25 THE COURT: Yes.

1           MR. BENNETT: Thank you, your Honor. It's kind of  
2 interesting the way this motion has moved. It started out  
3 that we were facilitating due diligence to implement some  
4 offers, and then when the movants realized that that runs  
5 into 904 and 941, 904 on the exclusive control over property,  
6 941 on exclusive right to file a plan, it moved over to be,  
7 well, those things might be inconsistent with this request,  
8 but now we see this as an aid of our objections to  
9 confirmation. And I think that's -- there's something pretty  
10 significant there that I will go into, but I think that boils  
11 down to three points of reality that I think has to animate  
12 the discussion, and I suspect your Honor has detected all of  
13 them based upon your comments today, but let me put them on  
14 the surface.

15           Reality number one. The core-noncore distinction  
16 applied not to proceedings in Bankruptcy Court but to assets  
17 of a debtor is an invention and terms of art in this case and  
18 this case alone. Even Fano, which is a case that's really  
19 short, so we can analyze every sentence and word together  
20 very easily, but even Fano doesn't involve such a  
21 distinction, and it's the case that everyone is going to talk  
22 about as somehow indicating that assets have to be addressed  
23 or be sold. I'll talk about it in a minute. It doesn't say  
24 that at all, but that's number one, first reality. And your  
25 Honor suspected that the city would take the position -- a

1 different position on the core-noncore question with respect  
2 to the art, and, your Honor, we do. It's core in many  
3 respects, and I think that in a lot of ways Mr. Kieselstein  
4 acknowledged that.

5           The second reality is that the bidders or the  
6 potential financing source -- alone, by the way, the city has  
7 no ability to repay, so that's a deferred sale. You borrow  
8 the money, and then there's a foreclosure someday. But in  
9 any event, those -- the bidders or the financing source are  
10 here for two reasons. Number one, because they've been told  
11 that FGIC and/or FGIC other creditor -- and the rest of the  
12 supporters of the motion are going to urge a sale and by  
13 participating in this round of, quote, unquote, bidding, they  
14 will acquire an inside track. That's the reality. That's  
15 what happened here. And the third reality --

16           THE COURT: And how do we know that?

17           MR. BENNETT: I can't imagine any other reason for  
18 them to be here.

19           THE COURT: It's just a matter of inference.

20           MR. BENNETT: Correct. It's a matter of inference.  
21 We did not do discovery. I will say that if we continue down  
22 this road -- and there's all kinds of reasons I don't think  
23 we will -- all of the bidders and the financing source will,  
24 of course, be added to the already very long lists of  
25 witnesses and people to be deposed. And I'm not saying that

1 because I think that's a great idea. It's just reality.

2           The third reality point, I think, now is also --  
3 suggests an interesting legal question, which is what's  
4 happening here is that we have an effort by a party to  
5 manufacture nonexpert evidence. They want to say this is  
6 some -- because none of these people are experts that would  
7 be permitted to testify as to value in this court or they're  
8 not being offered that way, but they want to manufacture some  
9 kind of percipient evidence in the middle of the proceeding,  
10 and they want us to help them do it. That's really at the  
11 end of the day what's going on here. And I'm having a hard  
12 time figuring out why that's a proper use of discovery  
13 because that's where we are. Remember, they've changed the  
14 motion to say this is all in aid of things happening at the  
15 confirmation hearing, so it's become a flavor of discovery,  
16 and the flavor of discovery it is, it's a flavor of discovery  
17 that's going to enable someone in the middle of a proceeding  
18 to manufacture some evidence. And as much and as long as and  
19 hard as I've thought of what discovery is supposed to be  
20 about, I don't think discovery is supposed to be about that.  
21 And I think, frankly, the -- as a legal matter -- a legal and  
22 technical matter, the use of 105 is improper in light of the  
23 fact that 904 and 941 really says selling assets is the  
24 province of the city if it's going to be in that business  
25 pursuant to a plan or not pursuant to a plan, so nobody else

1 has got any business talking even hypothetically about sales  
2 of city property, and that to the extent that this is a  
3 dressed up discovery motion to aid the creation of evidence  
4 for the confirmation hearing, it's an inappropriate use of  
5 discovery. We do expect to see expert testimony from people  
6 about topics like this, and that, of course, is something  
7 that's fair game.

8           Okay. One of the really important points also --  
9 and I think your Honor may have foreshadowed that you've seen  
10 this -- is that the words I think were used, "We want to find  
11 out what it's worth," and I think the most important word in  
12 that sentence is "it's." What is "it's"? The kind of offers  
13 that people are -- or that the -- that FGIC and the other  
14 creditors behind the motion want to bring before the Court is  
15 a sale value free and clear of every conceivable restriction  
16 or other right under the sun, and that's not terribly  
17 relevant, and it's not terribly relevant for two reasons.  
18 One, as we've indicated before, whether people like them or  
19 not, there is a wide variety of arguments as to why the art  
20 in total could not be sold, some that have been embodied in  
21 the attorney general's opinion, others that have been  
22 advanced by what I call the DIA Corp. And there is a  
23 multitude of restrictions that have been imposed in  
24 connection with the manner in which different works of art  
25 have been acquired. To say that there is power in the

1 Bankruptcy Code under 363(f) to sell free and clear, which,  
2 by the way, may have been a clearer proposition years ago --  
3 these days there are issues with respect to exactly how far  
4 363(f) goes -- doesn't actually answer this question because  
5 everyone asserting a claim, right, interest in the art in the  
6 form of a restriction or anything else is going to stand up  
7 and say, "I'm entitled to be adequately protected," so there  
8 is not a scenario that the city can think of where its worth  
9 is going to turn out to be for all pieces the retail price at  
10 an auction because it's just not where we are. And even if  
11 we could get there with respect to some works, we are many,  
12 many years away from it. So I think another point that we  
13 question is we're dealing with evidence that ones would  
14 manufacture with a view to bringing it to the Court at the  
15 confirmation hearing about a sale context that isn't real,  
16 and that's another reason to say why are we going through all  
17 of this.

18           A couple of clean-up points that came up in the  
19 argument, just for clarity, on June 14th we said this is an  
20 asset. People are talking about it. We don't know what we  
21 could or should do about it. It has to be studied. And,  
22 frankly, I don't know that we ever finished all of the  
23 studying, so I don't think that -- has the city really  
24 decided it -- you know, what it would do if the grand bargain  
25 fell apart, the city has not, so -- and many people have



1 inquired. And, secondly, for clarity, the art -- there is  
2 actually some art on the books of the City of Detroit, but  
3 it's statues in squares and in the front of the City Hall.  
4 There's actually no -- none of the art on the books of the  
5 City of Detroit is the art in the DIA, and it has never been  
6 on the balance sheet or on any financial statements with  
7 respect to the city.

8           Okay. You know, last point on this is that we --  
9 there's a lot of issues that relate actually to how this  
10 would go about the expense and inconvenience. I think that  
11 the city sees all these points as well, but I think there's a  
12 representative of the DIA Corp. that would like to address  
13 the Court on those matters directly.

14           THE COURT: Okay. Thank you.

15           MR. HACKNEY: Okay.

16           MR. O'REILLY: Good morning, your Honor. Arthur  
17 O'Reilly for the DIA or, as Mr. Bennett calls it, the DIA  
18 Corp. Your Honor has already focused pretty clearly on the  
19 concerns that the DIA expressed and put it in its objection.  
20 I'm standing here to address any concerns that the Court may  
21 have that haven't been answered but also to respond to some  
22 of the things that Mr. Perez said. On the one hand, he says  
23 that there is no jeopardy. On the other hand, he says it's a  
24 valid concern. What he's asking to do or what he's asking  
25 the Court to do is to order the city to order the DIA to

1 allow interested purchasers to come in, pull works of art off  
2 the wall, pull backings off potentially, unroll tapestries,  
3 all of these things. That is absolutely an interference and  
4 absolutely creates a potential for harm. He seems to believe  
5 that it doesn't matter as long as you do it well enough with  
6 the right people. The trouble there, your Honor, is that if  
7 you're talking about 3,000 works being done in this  
8 compressed time frame, that's just not correct. In order to  
9 take Cotopaxi off the wall, which is one of the most singular  
10 unique pieces in our collection, you need lifts, scaffolds,  
11 six technicians. You've got to move statues left and right.  
12 All of this -- all of that movement creates the potential for  
13 risk. The very best way to keep art safe is not to touch it,  
14 is to leave it in place. He has no response as long -- as  
15 far as I heard, to the notion that Christie's didn't have to  
16 do this. When Christie's came in, they came in on off days,  
17 and they reviewed and they looked at the works right as they  
18 laid in front of them. I reject the proposition that there  
19 isn't the potential for risk in what they're planning to do  
20 here.

21 In terms of the burden, I think your Honor has also  
22 sort of hit it on the head there. Could it be done?  
23 Absolutely. But you'd have to close off sections of the  
24 museum. You would have to hire full-time help to do this.  
25 By the way, the Christie's engagement probably took one full-

1 time employee time about six months. What they're doing or  
2 what they're proposing doing is far more than that because  
3 Christie's didn't take things off the wall. That process  
4 cannot be done fast. If you do it fast, you risk harm to the  
5 works.

6 The other point that your Honor focused on I think  
7 is quite right. It's just not necessary. To do what  
8 Christie's did is wholly sufficient in these circumstances.  
9 Now, he says that we drop a footnote that says if there's  
10 actually a sale, you might actually look at the work. Yeah,  
11 probably so. If you're actually selling the work, you'd  
12 probably look at the work, but that's not required to do the  
13 process they're talking about here.

14 He also touched a little bit on the discovery issue.  
15 I'm, frankly, a little bit flabbergasted by the process here.  
16 We've been trying to work helpfully and cooperatively with  
17 this group, reached a discovery agreement, in fact, on all  
18 these issues. I was surprised, to say the least, to say that  
19 they want to dive back in on 3,000 more works, pull up donor  
20 files, object files, root through those records once again to  
21 do that, and he's never talked to me about it before  
22 following the revised proposed order last Thursday. Unless  
23 your Honor has any questions --

24 THE COURT: Well, why a confidentiality order other  
25 than as to personally identifying information or personally

1 sensitive information?

2 MR. O'REILLY: Well, the confidentiality order was  
3 precisely for that purpose. We have donor files that include  
4 wills, trusts, and other things like that, and, frankly, the  
5 pace and the cadence with which we did this didn't allow us  
6 to go through and do that and say this is certainly not  
7 confidential. These are massive amounts of records, and we  
8 were trying to work collaboratively, so that's why it  
9 existed. Now, Mr. Perez talked about that being one part for  
10 the confidentiality issue, and then he said we hadn't joined  
11 issue on something else, and I'm not sure what that something  
12 else is, so I can't really address that, but we've done -- at  
13 least in broad brush strokes we've tried to categorize those  
14 things that are likely to contain confidential material and  
15 those that are not. And if at such time they say this  
16 doesn't seem to have any, absolutely we'd be --

17 THE COURT: Okay.

18 MR. O'REILLY: -- more than pleased to remove that.

19 THE COURT: Thank you.

20 MR. O'REILLY: Thank you, your Honor.

21 THE COURT: Anyone else in opposition to the motion?  
22 Reply, please.

23 MR. PEREZ: Your Honor, just a couple of points.  
24 Number one, Mr. Bennett talked about the distinction between  
25 noncore -- core and noncore asset. Your Honor, 436

1 specifically authorizes the sale of noncore assets, so  
2 there's no issue but that there is a distinction between  
3 assets that are core that you need for the health, safety,  
4 and welfare of the citizens, and assets that aren't core, and  
5 they are specifically authorized to dispose of those assets  
6 under 436.

7           Second, your Honor, I'm honored that Mr. Bennett  
8 thinks that we are so clairvoyant as to be able -- as to be  
9 doing this in order to manufacture evidence and obtain this  
10 discovery. Your Honor, we read LaSalle. We read what the  
11 Court has said. We want to provide a meaningful value for  
12 the art. That's all we're trying to do. And although,  
13 again, Mr. Bennett attributes -- or infers what's being said,  
14 if the Court can read the documents, it clearly says we don't  
15 own it, we can't sell it, we probably can't compel the city  
16 to sell it. That was all in the documents, your Honor.

17           And with respect to counsel for DIA, we've acted  
18 responsibly in this whole case. There's no reason to think  
19 that we're not going to continue to act responsibly. If the  
20 issue of taking it off the wall and inspecting the front and  
21 back is the gating issue, I'm happy to have a conversation  
22 about that with the bidders. I mean, in essence, your Honor,  
23 we had a very broad order that just basically said let's talk  
24 about how to do this. At the Court's suggestion, we went out  
25 and said, "Okay. Well, tell me what it is you want," and, in

1 fact, a lot of the information that's already been produced  
2 to us will satisfy some of that information --

3 THE COURT: Is there anything --

4 MR. PEREZ: -- assuming we could use it.

5 THE COURT: Is there anything preventing you, your  
6 appraisers, the bidders from spending as much time as they  
7 want at the Detroit Institute of Art inspecting the art  
8 that's on the walls and gathering whatever conclusions about  
9 that art they --

10 MR. PEREZ: Your Honor, I suspect --

11 THE COURT: -- need to gather?

12 MR. PEREZ: I suspect they've done that already. I  
13 suspect that they've done that already. I know that  
14 Houlihan --

15 THE COURT: So the answer is no. There's nothing to  
16 prevent that.

17 MR. PEREZ: Correct, your Honor. Correct. But I'm  
18 not sure that really gets us where we want to be because  
19 they've done that already.

20 THE COURT: What else is there besides taking the  
21 wall off -- the art off the wall --

22 MR. PEREZ: Well, your Honor, I --

23 THE COURT: -- or the wall off the art?

24 MR. PEREZ: Well, first of all, access to all of the  
25 files, which obviously they don't have, to determine, you

1 know, who owned it and the circumstances.

2 THE COURT: Okay. But why isn't access to documents  
3 a matter of ordinary discovery, and why isn't it a matter of  
4 what you've already been working out with the DIA? I mean it  
5 was quite a massive subpoena you laid on them.

6 MR. PEREZ: And we negotiated something that was  
7 acceptable to them.

8 THE COURT: What kinds of documents do you need did  
9 you either not ask for or they have refused to give you?

10 MR. PEREZ: Well, your Honor, the biggest issue is  
11 is that we have, in essence, been limited to two days of  
12 inspection of documents, one week and two days. It was  
13 inspection of documents this week. We have three people  
14 there. Those are --

15 THE COURT: So you need more time? That's what this  
16 is about?

17 MR. PEREZ: No. No, your Honor, we don't. It's not  
18 about needing more time. It's about trying to figure out if  
19 there's somebody out there, as Mr. Kieselstein said, who  
20 will, in fact, say, "I'm going to, you know, belly up to the  
21 bar, and I'm going to put" --

22 THE COURT: Right. I get that, but my question is  
23 why isn't the publicly accessible hours of the DIA, whatever  
24 they are, sufficient to accomplish that purpose?

25 MR. PEREZ: Your Honor, any reasonable person who's

1 going to put out a billion and a half, two billion dollars is  
2 going to -- is going to -- is going to want to be able to  
3 understand what it is that they're paying, and so when the  
4 bidder tells you --

5 THE COURT: They know what they're paying. What you  
6 meant was what they're buying.

7 MR. PEREZ: Exactly. Correct, your Honor, and --

8 THE COURT: Okay. But it's there for them to see  
9 except for the back, and you already told me that you're not  
10 sure why they need the back.

11 MR. PEREZ: Well, I think they need the back --  
12 well, I don't know. I'm not an art expert.

13 THE COURT: Well, first you said authenticity. Then  
14 I said, well, is there really any doubt about that, and you  
15 said no, so I'm at a loss to understand what's really at  
16 issue here. You can get all the documents you need by  
17 ordinary discovery. You can get all the access to the art it  
18 appears you need by paying the admission fee if there still  
19 is any. I'm not even sure.

20 MR. PEREZ: There is unless you're from the --

21 THE COURT: What's left? What is this motion about?

22 MR. PEREZ: This motion is about getting some  
23 cooperation.

24 THE COURT: But to do what?

25 MR. PEREZ: To be able to do diligence as you would



1 normally do. It's not discovery. It's diligence. There's a  
2 big difference between --

3 THE COURT: But, see, that's too vague for me. I  
4 got to know what you're asking me to order them to do. It's  
5 more than provide documents --

6 MR. PEREZ: It's more than provide documents.

7 THE COURT: -- presumptively. It's to give access  
8 to the art, but you have access to the art just like everyone  
9 does.

10 MR. PEREZ: Well, we don't have access to the art.  
11 We don't have access to all of the art. Okay.

12 THE COURT: Oh, you want access to the art that's  
13 not publicly displayed?

14 MR. PEREZ: May want. We may want some access to  
15 that art. Okay. So there's only 9,000 pieces on display,  
16 roughly, and it's possible that we may want access to some of  
17 that art, so it's not all on display.

18 THE COURT: Do you know what art that's not on  
19 display you do --

20 MR. PEREZ: I do not.

21 THE COURT: -- want access to?

22 MR. PEREZ: I do not, your Honor. I do not. We  
23 haven't got -- I mean we haven't gotten that far, and it  
24 could be that, you know, after some discussion we would know  
25 what that is, but I do think --

1 THE COURT: Um-hmm. Okay.

2 MR. PEREZ: But I do think, your Honor, that the  
3 requests -- I mean we didn't make up what was in the order.  
4 I mean we talked to each of the interested parties to say  
5 what is it, what is it that you would want.

6 THE COURT: Okay.

7 MR. PEREZ: Thank you, your Honor.

8 THE COURT: Mr. O'Reilly -- oh, I'm sorry. I didn't  
9 know you were busy.

10 MR. O'REILLY: I'm sorry. I was occupied. Yes,  
11 your Honor.

12 THE COURT: What's the DIA's position on granting  
13 access to works of art that are not currently on display?

14 MR. O'REILLY: It depends on what you mean by  
15 "access," but we -- subject --

16 THE COURT: An opportunity to inspect.

17 MR. O'REILLY: An opportunity to review them. It  
18 depends on which ones they are, by the way, your Honor --

19 THE COURT: Um-hmm.

20 MR. O'REILLY: -- because some of them are in  
21 storage in a way that's not actually easily accessible, but  
22 some are on racks which can be pulled out fairly easily and  
23 put back in.

24 THE COURT: Um-hmm.

25 MR. O'REILLY: Where I think the DIA has --

1           THE COURT: So you have no opposition to it in  
2 principle. It's just a question of working out the --

3           MR. O'REILLY: Its potential, its scope, its number  
4 and things like that and burden and all those things, which,  
5 by the way, it would have been one thing if they had raised  
6 this --

7           THE COURT: Right.

8           MR. O'REILLY: -- with me before, but they didn't do  
9 that.

10          THE COURT: Right.

11          MR. O'REILLY: Thank you, your Honor.

12          THE COURT: Thank you, sir. All right. Anybody  
13 else have anything further on this? All right. I'm going to  
14 take this under advisement until after lunch, and I will give  
15 you a decision then.

16          (Recess at 10:53 a.m., until 2:00 p.m.)

17          THE CLERK: All rise. Court is in session. Please  
18 be seated. Recalling Case Number 13-53846, City of Detroit,  
19 Michigan.

20          THE COURT: I'd like to resolve first the motion of  
21 the creditors directing the debtor to cooperate with  
22 interested parties seeking to conduct due diligence on the  
23 art collection at the Detroit Institute of Arts, and then  
24 we'll get back to concluding the arguments on the motions to  
25 intervene. The Court concludes that this motion should be

1 denied. Initially, the Court concludes that the city's  
2 objection that the Court lacks the authority to grant the  
3 motion should be overruled. The Court concludes that it does  
4 have the authority under the Federal Rules of Civil Procedure  
5 if not Section 105 to grant the relief that is requested in  
6 its discretion. In the circumstances here, however, the  
7 Court concludes that the circumstances do not warrant  
8 granting the relief sought. Drilling down with counsel in  
9 the specifics of the relief that is sought, it appears to the  
10 Court that there are three specific types of relief sought.  
11 The first is with regard to document production relating to  
12 documents in the possession of the Detroit Institute of Arts.  
13 The second is in regard to removing art from the walls or  
14 other locations that it may be in there at the Detroit  
15 Institute of Arts for purposes of inspection and appraisal.  
16 And the third is the opportunity to inspect art that is not  
17 on display and not publicly available.

18           Addressing first the motion as it pertains to  
19 documents, the record does not establish any cause to grant  
20 this motion as to documents. There are the usual document  
21 production mechanisms that are not only available but have  
22 been utilized by these very creditors in the case, and the  
23 Court -- and the rules state a -- or have a preference for  
24 the use of those procedures. To the extent, of course,  
25 there's any dispute about whether a document or a group of

1 documents or a list of documents should be turned over, the  
2 Court is, of course, willing to resolve that dispute even on  
3 an informal basis on the telephone, but there's no cause to  
4 grant this motion as to a broad category of documents while  
5 the parties are attempting to work it out.

6 As to art that is on the walls that the moving  
7 parties seek authorization or permission to remove, again,  
8 the Court concludes that the record fails to justify this  
9 extraordinary relief. It just doesn't appear in the record  
10 that it is necessary to remove art from the walls and give  
11 parties an opportunity to inspect the reverse sides of art to  
12 accomplish any purpose that's related to their objections to  
13 plan confirmation. The record doesn't justify a finding that  
14 that's needed. Rather, the record establishes that the  
15 access that parties have simply by going to the museum like  
16 everyone else to look at and inspect the art is sufficient  
17 for the purposes that the moving parties assert here.

18 Apart from that, of course, is the issue of the risk  
19 to the art that would result from granting the relief that  
20 these moving parties seek here. The record establishes that  
21 this is a substantial risk and not one that should be  
22 undertaken lightly or in the absence of extraordinary cause,  
23 and in the absence of such cause here, the Court denies this  
24 relief as well.

25 Finally, as to the issue of access to art which is

1 not on public display, the Court understands that the DIA is  
2 willing to allow that access on reasonable terms, and there  
3 is no reason why that can't be worked out between the moving  
4 parties and the DIA. The record does not establish any cause  
5 for the Court to get involved at this stage. Once again,  
6 however, if there is a dispute about the terms or the extent  
7 of access, the Court is certainly available to resolve any  
8 such disputes even on an informal telephonic basis.

9 For these reasons, therefore, the motion is denied.  
10 The Court will prepare an order.

11 (Recess at 2:06 p.m., until 2:46 p.m.)

12 THE COURT: And let's return our attention in the  
13 bankruptcy case itself, please, to our continuing discussions  
14 on discovery.

15 THE CLERK: Recalling Case Number 13-53846, City of  
16 Detroit, Michigan.

17 MR. HACKNEY: Good afternoon, your Honor. Stephen  
18 Hackney on behalf of Syncora.

19 THE COURT: Good afternoon.

20 MR. HACKNEY: What was technically up -- sorry about  
21 that.

22 THE COURT: Just let things settle down a little  
23 bit.

24 MR. HACKNEY: Raring to go.

25 THE COURT: Me, too, I assure you. Okay.

1           MR. HACKNEY: Thank you, your Honor. What was  
2 technically up for you today for me, for Syncora, were our  
3 efforts to compel answers to our interrogatories.

4           THE COURT: Right.

5           MR. HACKNEY: Between the time of our hearing on  
6 Monday and today, I sat with Mr. Irwin over the phone and  
7 attempted to resolve via meet and confer that issue so that  
8 we could take it off your plate. That conversation bled into  
9 a broader conversation about certain things that transpired  
10 on Monday with respect to, for example, the January 1, 2013,  
11 date and some of the other things that came out of the motion  
12 to compel, and I'll note as an aside right now that those are  
13 issues that I think are broader than just Syncora and may  
14 impact other creditors at well, so I am -- as well, and so  
15 what I wanted to do was to lay out for the Court a grand  
16 bargain of our own, so to speak, that -- or, as Mr.  
17 Kieselstein would say, a grandiose bargain, but --

18           THE COURT: Does it involve \$800 million?

19           MR. HACKNEY: Yes, yeah. And actually Syncora is  
20 now going home because Mr. Irwin gave it to me, and we're all  
21 good.

22           THE COURT: We're all set. Okay.

23           MR. HACKNEY: So --

24           THE COURT: Better cash that check today.

25           MR. HACKNEY: Yes, yeah.

1 MR. IRWIN: Good luck.

2 MR. HACKNEY: So I think -- I believe that he and I  
3 came to a good arrangement that's fair, but it implicates  
4 certain things that were, I think, ostensibly part of your  
5 order on Monday, and so we didn't want to just kind of come  
6 and announce it to you in the way of this is what we are  
7 going to do because it implicates things that are in your  
8 order, so perhaps I can lay out the main components.

9 THE COURT: Sure.

10 MR. HACKNEY: The issue around the January 1, 2012,  
11 look-back, which is something the Court sort of suggested  
12 ordered at the hearing on Monday, Mr. Irwin said that's going  
13 to cause the city a burden because it will have to rerun the  
14 searches on all 90 custodians back now a year and review and  
15 produce those documents. And what I said to Mr. Irwin was  
16 our concern about the January 1, 2013, cutoff that they  
17 applied is somewhat category specific. For example, I don't  
18 really have a problem with it as it applies to the  
19 restructuring and reinvestment initiatives because those  
20 didn't exist prior to January 1, 2013. By contrast, I told  
21 you that with respect to historical revenue data, that's one  
22 where the January 1, 2013, was an obvious problem for us, and  
23 so what I proposed to him was that if the city would give  
24 Syncora more responsive answers to our interrogatories that I  
25 have narrowed and clarified in certain circumstances to



1 facilitate that, and if the city would commit to me that it  
2 will sit with me to understand the specific categories of  
3 documents where the Jan. 1, 2013, limiter is a problem or  
4 where the other aspects of its objections are a problem, and  
5 we will work together to say let's get all of the needed  
6 historical revenue documents or Document X or Document Y but  
7 in discrete categories that I thought it would be acceptable  
8 to me -- and I've spoken to some other creditors who have  
9 made similar signals -- that the city not go back and do the  
10 Jan. 1, 2012, review of all the custodians because even that  
11 effort might not address what we're talking about now, so  
12 this may be a better way to skin the cat but also one that  
13 saves the city burden. And we also agreed as part of that  
14 that the city would deem Syncora's discovery responses to  
15 date sufficient. So that is the main parts of the bargain  
16 that we proposed.

17 Now, I will note that it involves, you know,  
18 compromise on both sides. It also involves on my part some  
19 trust in the city that they will, in fact, give me these  
20 answers to the interrogatories. They will, in fact, sit with  
21 me and help me get these categories of documents that as yet  
22 we haven't threshed out, and so it's possible that we may  
23 have to come back to you later if there's a problem. We will  
24 hope not to, but I don't want to say, oh, it's all tied up in  
25 a bow, and it's all done.

1 THE COURT: Right.

2 MR. HACKNEY: There was a last issue that I wanted  
3 to bring to your attention because it impacted the order that  
4 the Court had asked us to submit after the motion to compel,  
5 and it related to the index that the Court had ordered. And  
6 what the city has signaled to us is that trying to index all  
7 of the documents by reference to the requests and say this  
8 document relates to these requests of these, you know,  
9 different creditors or this one relates to these different  
10 creditors was going to be too difficult for them to do  
11 because it would involve a document-document by review and  
12 tag. What Mr. Irwin proposed to me instead was that the city  
13 is going through the different requests, and what it does in  
14 response to a request is it says information responsive to  
15 this request can be found in custodians A, B, and C, and they  
16 can be located at ranges X, Y, Zed of the production. And I  
17 have talked to others, and I think I've signaled to him,  
18 okay, you know, obviously you'd love as much detail as you  
19 can, but we understand under the circumstances that there are  
20 limits on what you can do, and so as part of this we would  
21 also propose to accept that limitation as a way of minimizing  
22 the burden on the city.

23 So those were the key components of what we  
24 discussed, but within that framework what it means is that I  
25 don't think that we need to argue our motion to compel the

1     interrogatories today. The only thing I might say was  
2     perhaps Mr. Irwin might want to step up and see if I got it  
3     about right. Thank you, your Honor.

4             THE COURT: Thank you for your efforts in working  
5     through all of this. Sir.

6             MR. IRWIN: Thank you, your Honor. I think that's  
7     fair. That's what we've discussed. I had a lot of homework  
8     after Monday, and I've been very busy sitting down talking to  
9     Mr. Hackney and other folks trying to make sure that the city  
10    can deliver to the creditors the information that they need  
11    the most, and in some respects it's easier to triage or  
12    create lists so that I can go back and I can make sure it's  
13    in the production already, or if it's not, I can get it  
14    relatively quickly, and that -- the kinds of information that  
15    I think Mr. Hackney is talking about, the categories that  
16    we've discussed so far, are the ones that lend themselves to  
17    that sort of an exercise, data or recurring reports, things  
18    like that, that, quite frankly, the city never meant to stand  
19    on a January 1st, 2013, date restriction in the first place.  
20    It was really for our ESI search. So we have no problem with  
21    that. We stand ready to sit down with Mr. Hackney or anyone  
22    else, deliver those information -- deliver the information or  
23    point to our production in terms of where it is and move  
24    forward in that regard.

25             I would also simply add that consistent with the

1 Court's order and expectation, we will be delivering the new  
2 hard drives with the new document production from the city  
3 tonight for receipt tomorrow morning, so we are, of course,  
4 very sorry for the false start, but the city --

5 THE COURT: Where do you stand in the clawback?

6 MR. IRWIN: In --

7 THE COURT: In getting the first hard drives back  
8 from people.

9 MR. IRWIN: Some of them are -- they've been  
10 delivered to different places. Some of them have been  
11 delivered to the vendor because they were sent out by our  
12 vendor directly to the objectors, so some go to the vendor,  
13 some are sent to me, some are sent to my colleagues, and I  
14 don't have an accurate number of that right now, but we did  
15 start receiving them. And we believe we are --

16 THE COURT: I've seen a number of declarations on  
17 the docket.

18 MR. IRWIN: Yes, yes. I just -- in terms of the  
19 physical receipt of the actual hard drives, I don't have a  
20 number for the Court right now, but I --

21 THE COURT: Okay.

22 MR. IRWIN: -- can provide that.

23 THE COURT: All right. So I think at this point I  
24 should just ask whether any counsel do have any outstanding  
25 requests for interrogatories or documents from the city that

1 they would like a ruling on.

2 MR. NEAL: Good afternoon, your Honor. Guy Neal,  
3 Sidley Austin, for National Public Finance Guarantee. No as  
4 to your question, but if I may have two minutes to address a  
5 discovery issue that is separate and apart from Syncora, I  
6 believe many of the parties in this courtroom are having  
7 productive meet and confers with Jones Day, and I'm not going  
8 to belabor the record to put down everything we've discussed  
9 except to state that yesterday Mr. Irwin reached out to me to  
10 ask National, Assured, and Berkshire and perhaps other DWSD  
11 parties and perhaps even the counties to prioritize their  
12 document requests as it relates to DWSD materials. And as to  
13 the January 1, 2012, cutoff, while that was not part of our  
14 discussion, there is an understanding based on your Court's  
15 rulings from Monday that as to specific document requests and  
16 historic financial information the city will endeavor to look  
17 for those documents from the appropriate custodians, and  
18 those requests may go back as far as January 1, 2009.

19 THE COURT: Right. Thank you.

20 MR. NEAL: One more point, your Honor, and this may  
21 be addressed later at the end of the day. The hard drive  
22 that we expect to receive, the new hard drive, tomorrow I  
23 don't believe is going to have documents responsive to the  
24 DWSD parties' discovery requests from three or four weeks  
25 ago, so that is part of the meet and confer process to try to

1 get those documents in the door as quickly as possible to  
2 review. But even as of May 16th, which is tomorrow's date,  
3 we're not going to have those documents. I just want to make  
4 that point on the record. Thank you.

5 THE COURT: All right.

6 MR. MARRIOTT: Good afternoon, your Honor. Vince  
7 Marriott, EEPK and affiliates, and Mr. Irwin and I have also  
8 been conferring, and I thought it would be worthwhile just to  
9 give you a status on where we are. We filed our response to  
10 the objections of the city to our interrogatories. I don't  
11 know whether you have it up there or would like it. It would  
12 be easier to follow if you --

13 THE COURT: Sure.

14 MR. MARRIOTT: -- had this in front of you. May I  
15 approach?

16 THE COURT: Yes.

17 MR. MARRIOTT: I think I can relatively quickly run  
18 through where I understand us to be, and Mr. Irwin can  
19 correct me if I get any of this wrong. Starting on page 2,  
20 Interrogatory Number 3, our principal objection to the  
21 response to Interrogatory Number 3 was that the city had made  
22 reference to produced documents dealing with blight but have  
23 not identified those documents. It is my understanding that  
24 when the index comes out, it will be -- the buckets that will  
25 be included as part of that index will be sufficient to

1 direct us to the documents that are responsive to  
2 Interrogatory Number 3. You know, if that turns out to be  
3 different, we'll address it with Mr. Irwin, but that's my  
4 understanding of --

5 THE COURT: Okay.

6 MR. MARRIOTT: -- the resolution of that. Number --  
7 Interrogatory Number 5 on page 4, I am told by Mr. Irwin that  
8 the answer to Interrogatory Number 5 is contained in the  
9 actual agreement or agreements memorializing the grand  
10 bargain, which are either attached to the plan or will --  
11 that was circulated or will be provided to us, and that's a  
12 satisfactory response to that interrogatory.

13 Interrogatory Number 9 on page 8, this was asking  
14 for information regarding the post-effective date governance  
15 of the city. The response was too much of a moving target.  
16 I agree with that response. It remains too much of a moving  
17 target. I'm aware of all the legislation that's pending and  
18 who knows, so that -- we're not pressing an objection to that  
19 response.

20 Interrogatory Number 10 was maybe not as clear as it  
21 ought to have been. I have spoken with Mr. Irwin. What  
22 we're looking for in Interrogatory Number 10 is whether there  
23 is any legislation the city believes necessary from the State  
24 of Michigan other than the legislation necessary to implement  
25 the grand bargain. And with the question clarified in that

1 fashion, Mr. Irwin has indicated that the city will supply an  
2 answer.

3 As to all other interrogatories as to which we have  
4 complained about their response, Mr. Irwin indicates that the  
5 city will take another stab, will review them, and if  
6 satisfactory, that will be that. If not, then we'll meet and  
7 confer and maybe be back.

8 THE COURT: Okay.

9 MR. MARRIOTT: In terms of the document -- we also  
10 filed sort of an objection to the documents that was  
11 principally based upon the inability to find anything easily.  
12 The index -- we'll look at the index, and hopefully that will  
13 take care of that issue. The date range issue I'm aware of  
14 what Mr. Hackney and Mr. Irwin have been talking about in  
15 terms of how to resolve that issue. We think that seems like  
16 a sensible path forward in terms of further discussions.

17 THE COURT: Thank you, sir.

18 MR. MARRIOTT: Before I -- there were, I know -- I  
19 don't know whether Mr. Ramirez is on the phone for Deutsche  
20 Bank, and I don't know whether Kramer wanted to speak to the  
21 interrogatories that they had submitted. I know that they  
22 may have some issues as yet unresolved.

23 MR. RAMIREZ: Good afternoon, your Honor. This is  
24 John Ramirez from Katten Muchin Rosenman, LLP, on behalf of  
25 Deutsche Bank. Just hearing what Vince -- Mr. Marriott said,



1 I'll reach out to Mr. Irwin and see if we can get ours  
2 resolved. I mean we're talking about maybe four  
3 interrogatories, so I think we may be able to get them  
4 resolved without having to continue with this process. Thank  
5 you, your Honor.

6 MR. WAGNER: Your Honor, Jonathan Wager from Kramer  
7 Levin representing the Dexia entities. We had two  
8 outstanding interrogatories. I've spoken to Mr. Irwin, and  
9 he tells me the responses to those interrogatories, which  
10 were addressed to pension issues, will be found in Milliman  
11 documents that will be produced by the city.

12 THE COURT: All right. Thank you.

13 MR. HACKNEY: Your Honor, can I raise one additional  
14 issue with you? It relates to the order that we're drafting  
15 for you that we'll modify according to what was discussed  
16 today, but the one thing that we didn't discuss last time  
17 together was the idea that what we -- what we're sort of  
18 doing is we're trying to do a reboot of the document  
19 production, and we're trying to do it in a way that makes it  
20 more efficient for the parties to review and understand what  
21 was done, but it doesn't mean we have actually resolved  
22 whether or not the production was adequate, and so I had -- I  
23 just put a date into the order that suggested that we would  
24 all get together again on May 27th, which is two weeks from  
25 last Tuesday, which is a date that's designed to allow the

1 parties to get the certification Mr. Irwin is going to give  
2 us on Monday, get the hard drives tomorrow, upload them to  
3 their system and have people begin to canvass them and  
4 hopefully spend the next week, you know, dominating that  
5 production and then leave a little time hopefully to engage  
6 Mr. Irwin and then yet move quickly enough so that if we have  
7 problems, we have them in front of you. And that was my open  
8 issue in terms of what should be in that order and whether  
9 that was something that you thought was a good idea.

10 THE COURT: I think I am available on that date  
11 subject, of course, to us finding a courtroom, so we'll track  
12 that down.

13 MR. HACKNEY: It was just a suggestion.

14 THE COURT: No. It's fine. Anyone else?

15 MR. HACKNEY: Mr. Irwin points out to me that I,  
16 number one, must be a cyborg and, number two, that I've  
17 forgotten that the Monday is Memorial Day and that perhaps it  
18 might be hard on people to come on Memorial Day. The last  
19 one was after Mother's Day, so we're hitting a lot of the  
20 holidays here on the -- what's that?

21 MR. NEAL: There's a hearing on Wednesday, the 28th.

22 THE COURT: Would you prefer the 28th, Wednesday?

23 MR. NEAL: We have a hearing -- your Honor, Guy  
24 Neal. There's a hearing scheduled for that date as it  
25 relates to the fee examiner motion on water, sewer issues at

1 10 a.m.

2 MR. HACKNEY: Perhaps that's --

3 THE COURT: All right. So we'll be here then  
4 anyway, and we know we have a courtroom, right, Chris? All  
5 right. So let's shoot for that date then. All right. If  
6 there are no other discovery matters, let's turn our  
7 attention to a status conference more generally with regard  
8 to plan confirmation. I have an agenda, but I'm perfectly  
9 willing to defer to others first.

10 MR. HERTZBERG: Your Honor, Robert Hertzberg, Pepper  
11 Hamilton, on behalf of the city. I had four items I'd like  
12 to bring up to the Court and see if we can get some  
13 resolution on, and I felt that the status conference was the  
14 appropriate forum to do it at. May I approach the bench,  
15 your Honor?

16 THE COURT: Yes.

17 MR. HERTZBERG: As the Court knows, we're in the  
18 middle of the discovery process, and the depositions are  
19 about ready to commence. If you look at the deposition  
20 witnesses that were filed, all the lists that came in this  
21 week, on the list you'll see -- and I'm going to give the  
22 Court some numbers, and if you look at the chart I had passed  
23 up to you just now, there is 196 witnesses identified, and  
24 the ones that are in the blacklined area are the ones that  
25 are --

1 THE COURT: Now, you said deposition witnesses. You  
2 meant trial witnesses.

3 MR. HERTZBERG: These are witnesses that were  
4 listed, yes, trial witnesses, will call or may call. If you  
5 look at the list, in the darkened area, shaded area, is the  
6 city's witnesses. Of 196 witnesses now listed, 30 are listed  
7 by the city.

8 THE COURT: And these don't include experts; right?

9 MR. HERTZBERG: That's what I was just going to add.  
10 These do not include experts or rebuttal experts, and --

11 THE COURT: The answer is no.

12 MR. HERTZBERG: Answer on what?

13 THE COURT: Calling 196 witnesses plus experts.

14 MR. HERTZBERG: Well, that's what we're going to get  
15 to. I knew the Court was going to say that, so I've got the  
16 perfect solution for the Court. If the Court would give me a  
17 second, I'll walk the Court through it, but I want to give  
18 you some more figures just so you can get a real flavor for  
19 what's going on here. Local AFSCME -- remember national  
20 AFSCME has settled out. Local has listed 23 witnesses on  
21 their witness list. Ambac listed 28 witnesses. DPOA, 12.  
22 36th District Court, the officers, 16 witnesses. Oakland  
23 County, 48 witnesses. Yes, I did say 48 witnesses they've  
24 listed on the sewer issue. David Sole, 14 witnesses.  
25 Syncora, 37 witnesses. Wayne County, 15 witnesses. That's

1 just giving you a flavor. You can go through my chart at  
2 your leisure, but that's what we're seeing has been listed in  
3 the witness list. As you indicated, the parties have yet to  
4 name rebuttal or experts or rebuttal experts. Several  
5 witnesses appear on several different witness lists. Just  
6 for example purposes, Mr. Orr, Mr. Buckfire, Mr. Malhotra,  
7 several other of the city witnesses. The rule is clear that  
8 they should be given one day, seven hours, under 30(d) to  
9 take the deposition of the witnesses. And I'd suggest to the  
10 Court it's also clear that they can't call them on several  
11 occasions. Each one who listed them doesn't get seven hours.  
12 It's one day, seven hours. And as a side note to the Court,  
13 they've all been deposed, these lead witnesses of the city,  
14 Mr. Orr and Mr. Malhotra and Mr. Buckfire, et cetera, on  
15 numerous occasions. Everyone knows what they're going to  
16 testify to. Everyone has sat through those depositions.

17 THE COURT: You know, you said that before, Mr.  
18 Hertzberg, and I have to say I have a hard time accepting  
19 that because while we know what they said before, we don't  
20 know what they're going to say at the trial on plan  
21 confirmation. The issues are different.

22 MR. HERTZBERG: They're different, but many of the  
23 issues have been discussed during the depositions, but that's  
24 fine, your Honor. I'll accept that as so.

25 THE COURT: Okay.

1           MR. HERTZBERG: But they're still entitled to one  
2 day, seven hours, and they can't combine it. If ten people  
3 have listed it doesn't mean that Mr. Orr, for example, should  
4 have to sit for ten days. He sits one day, seven hours, and  
5 we'll make him available for that. We should do like we did  
6 in the eligibility trial, have a lead counsel or a lead  
7 questioner put in place with the other parties to fill in  
8 where needed. That way the depositions have some control  
9 over them during the process.

10           I also have another suggestion to the Court. Just  
11 as the Court said we are not having 196 witnesses -- and by  
12 the way, by the time we get done it's probably going to grow  
13 to 230 or 240 -- I suggest to the Court that the Court should  
14 limit each objecting party to three witnesses. There's no  
15 reason the city should be put in the burden, the cost, the  
16 time, et cetera, to have to depose 160 witnesses plus the  
17 experts and rebuttal experts.

18           THE COURT: Why three?

19           MR. HERTZBERG: Because I think it's a fair number.  
20 The city has the burden on feasibility, and I can hear the  
21 thundering herd behind me coming up to the podium saying this  
22 is outrageous, how could he suggest this, we have rights, we  
23 have a right to object, we have the right to call the  
24 witnesses, this Court doesn't have the authority to do it.  
25 The court has the absolute authority to limit the witnesses,

1 and the reason it's three, it's more than adequate to make  
2 their case because remember they're going to cross-examine  
3 our 30 witnesses we put on, so they're going to have the  
4 right to bring their three witnesses forward to the Court to  
5 make their case. That's more than enough witnesses. There's  
6 no reason we should have the amount of witnesses they want  
7 because otherwise, to be real frank with the Court, we'll be  
8 here for two years trying this case if they get what they  
9 want. Doesn't make sense. The Court has the right to  
10 control its docket. I'm asking the Court to limit it to  
11 three, which I think is more than reasonable.

12           Next, we have the 30(b)(6) deposition notices. We  
13 received three of them. The rule is not clear, and I suggest  
14 to the Court because I recently had this issue in another  
15 case on whether the witness has to appear twice if it's a  
16 witness who's going to testify to a 30(b)(6) issue and then  
17 also be a witness subject to another deposition. I'm asking  
18 the Court to make it clear now --

19           THE COURT: I'm sorry. What's the ambiguity there?

20           MR. HERTZBERG: Well, there is no -- I don't know if  
21 there's an ambiguity. What I'm asking the Court is to make  
22 the following ruling. They've served 30(b)(6) notices on us,  
23 three of them. We have to identify the witnesses that are  
24 going to address specific issues, which we stand prepared to  
25 do. For example, if Mr. Orr is going to address "X" issue

1 and Mr. Buckfire is going to address "Y" issue, there's no  
2 reason that either of them should have to come to a 30(b)(6)  
3 deposition, testify, and then a week later, two weeks later,  
4 three weeks later appear before the same parties for another  
5 seven-hour deposition. They should be combined. I suggest  
6 to the Court, having dealt with this issue in a case  
7 recently, case law supports that approach. One appearance,  
8 not two because of the 30(b)(6). We will identify the  
9 witness for the issue, but they should only appear once for  
10 one deposition, seven hours, as required by the rules.

11 We will have some issues, just so the Court is  
12 aware, but we will bring them through the procedure of a  
13 protective order on some of the 30(b)(6) requests. Just to  
14 give you a couple examples of the kind of stuff that was put  
15 in the 30(b)(6) requests, Syncora, number one, asked for,  
16 quote, "the historical causes of the city's financial  
17 instability and bankruptcy filing." Oakland County in Number  
18 15 of their 30(b)(6) wants, quote, "the identity, location,  
19 financial position of the city retirees." I can go on, but  
20 I'm not going to burden the Court today. I'm just  
21 highlighting these so that you know we're coming with this.  
22 We're going to ask for a protective order because some of  
23 these are just too far afield and shouldn't be allowed.

24 So, in summary, as to the first issue -- and I guess  
25 I combined two of them, the 30(b)(6) and the limiting of the



1 time and the witnesses -- we're also going to ask for a third  
2 thing as part of that first request. Right now I believe  
3 it's June 27th is the date for fact witness discovery to be  
4 completed. I don't think it's reasonable even when the Court  
5 limits each party, as I suggested, to three witnesses. What  
6 I think would make more sense and I'm suggesting to the Court  
7 is -- and I assume the parties will support this -- is that  
8 we move that date -- not move any of the other dates but move  
9 that date out to July 15th. Makes more sense. We're right  
10 in the throes right now of the document discovery and the  
11 interrogatories being responded to. Parties are going to  
12 need time to depose witnesses. Otherwise what's going to  
13 happen is not just to the city but to the objectors, we're  
14 going to be in a situation where we're all going to have to  
15 put together six teams of litigators in order to schedule six  
16 different depositions each day at different locations with  
17 different teams handling it. That doesn't make a lot of  
18 sense. In order to do it more efficiently, to grab off  
19 another 15 days or so I think makes a lot of sense, so just  
20 in summary on point one, and then I can move on to point two  
21 and three unless the Court wants to address that first, one  
22 witness for the 30(b)(6), if it's the same witness, only  
23 appear once, seven hours, one day, have a lead questioner  
24 appointed to handle it and let the others fill in as needed,  
25 extend the date to July 15th and limit each of the objectors

1 to three witnesses, your Honor. Would you like me to address  
2 the other issues I have? Okay.

3 We're about -- I think about two months now from the  
4 actual starting of the trial. City has been thinking long  
5 and hard about what it wants to present to the Court and how  
6 it wants to present its evidence to the Court. And as we  
7 discussed it, we think -- how are we going to educate the  
8 Court to our case, a lot of issues involving blight, what's  
9 going to be done with the city, the M-1 rail, how are the  
10 neighborhoods, what's going on with the midtown area, the  
11 downtown area. And we can get up, and we can have witnesses  
12 testify to it, but I thought a good approach might be -- and  
13 I suggest to the Court and I would hope the Court would go  
14 along with it -- is to go on a bus tour with us, and we can  
15 set up a situation where we can have representatives of the  
16 different parties and the Court's experts on the bus. We  
17 could figure out the logistics later. But I think it's  
18 important for the Court to come out with us as part of our  
19 case to see what's going on in the city. We can get up here  
20 and have a witness, for example, testify to the Court that  
21 we're going to run the M-1 rail from midtown to downtown and  
22 what impact it's going to have and where the stadium that's  
23 proposed to be built is going to sit, but unless the Court  
24 sees that, I don't believe the Court is going to get a full  
25 understanding of what's going on in the city. By actually

1 getting out on a bus and driving that -- because I did it the  
2 other day. I happened to be with Mr. Shumaker and Mr. Moss,  
3 and I said, "I want to show you what's going to go on, and I  
4 want to show you the M-1 route so that you can understand  
5 it." And we went up and down that, and I pointed out the  
6 different highlights, the new stuff that's going on, how it  
7 will impact the city, what's going on in the neighborhoods,  
8 the blight and the blight removal, how that will impact the  
9 schools, et cetera, so my feeling is -- and I hope the Court  
10 would go along with this -- is that we could do a city tour  
11 as the opening part of our case for the Court to really get  
12 an understanding of what I refer to as the good, the bad, and  
13 the ugly, but there's a lot of hope out here for the city,  
14 and the Court will be able to see that so that when the  
15 witnesses get on that stand, the judge -- you, as the judge,  
16 will say, "I've seen that. I've got a better idea now what  
17 they're talking about." So that was my second request.

18 My third request and final request is that we be  
19 allowed to amend our witness list, and you're going to say,  
20 "You just told me how you had 196 witnesses." We want to add  
21 two, one the Court suggested, the first one being a member of  
22 the City Council. We want to be able to amend -- no  
23 depositions have started. The Court suggested -- and we've  
24 taken the Court's suggestion to heart. We'd like to amend  
25 our list and add a member of the City Council to testify.

1 THE COURT: I made that suggestion before the  
2 deadline --

3 MR. HERTZBERG: Well, maybe we'll withdraw that.

4 UNIDENTIFIED SPEAKER: Fire drill.

5 THE COURT: Hum?

6 UNIDENTIFIED SPEAKER: Fire drill.

7 THE COURT: Fire drill?

8 UNIDENTIFIED SPEAKER: Yeah.

9 THE COURT: All right. We're going to be in recess.

10 (Recess at 3:18 p.m., until 4:20 p.m.)

11 THE CLERK: All rise. Court is in session. Please  
12 be seated. Recalling Case Number 13-53846, City of Detroit,  
13 Michigan.

14 MR. HERTZBERG: Your Honor, Robert Hertzberg on  
15 behalf of the city. I think we were at the point in time  
16 when the alarm went off, and I could only suspect who pulled  
17 that on me, but you had asked me the question why, I think --  
18 you were just starting to ask why we hadn't amended earlier  
19 when you had suggested the City Council person, and I was  
20 about ready to respond, and I was going to tell the Court the  
21 following. Immediately after you made the suggestion, we've  
22 been in touch with City Council. Myself and a couple people  
23 from Jones Day have had several conversations with Brenda  
24 Jones, the president of City Council. We're in discussions  
25 on whether they will appear as a witness, and I think because

1 of that, I wasn't about ready to come before the Court and  
2 commit that we were going to add a witness till I got a sense  
3 that I thought that they were willing to do it. I'm not sure  
4 a hundred percent yet, but I thought because the Court has  
5 set periodic status conferences that it's more or less open  
6 mike to tell the Court our thoughts on where we're at and  
7 what we think should be going on within the case, and that  
8 was the purpose of it, deal with discovery issues, witness  
9 issues and stuff, and let the Court know our thinking. I  
10 thought it was appropriate at this time because we don't have  
11 another one for awhile to let the Court know that we will  
12 probably be amending our witness list to add a member of City  
13 Council, most likely Brenda Jones possibly, and one other  
14 witness. The city has recently hired an IT person, Beth  
15 Niblock, I believe it is, who's a new hire of the city to  
16 head up the IT Department, and we want to add her to testify  
17 to the systems, the improvements needed, and the cost. I  
18 preface it once again by two things, one, that the  
19 depositions have not started at this point in time -- we're  
20 just in the document and interrogatory process -- and,  
21 second, I understand that I stood up before the Court and  
22 said, "Guess what? There's so many witnesses," and then out  
23 of the next breath I take I tell the Court I wanted to add  
24 two, but as the Court is aware, we have the burden in this  
25 case to prove that our plan is feasible and all the other

1 requirements of the Bankruptcy Code. Because of that, when  
2 we had a new hire in the IT Department, which is a critical  
3 piece of our plan, I thought it was necessary to come before  
4 the Court when we had the opportunity today to notify the  
5 Court of that. Does the Court have any questions on the  
6 three asks that I made of the Court?

7 THE COURT: No.

8 MR. HERTZBERG: Thank you.

9 THE COURT: Thank you.

10 MR. NEAL: Good afternoon again, your Honor. Guy  
11 Neal, Sidley Austin, National Public Finance Guarantee. To  
12 say that the objecting parties were surprised by  
13 Mr. Hertzberg's request to make a series of adjustments,  
14 modifications, procedural and substantive limitations to the  
15 discovery process and the scheduling order, that would be an  
16 understatement. We were going to ask for a brief recess,  
17 and, thank you, we had a brief recess and had time to confer.  
18 I hope you were warm, your Honor, and in a place where there  
19 were not 40-mile-an-hour winds. But back to the request, to  
20 say that we were surprised is genuine because each one of us  
21 has had separate meet and confers on a variety of discovery  
22 matters, and at four o'clock today it's the first we heard of  
23 any of these procedural and substantive modifications.

24 We would submit that the process -- if the meet and  
25 confer process is to mean anything, we should meet and confer

1 over this process, perhaps work on a pretrial order or an  
2 amendment to the existing scheduling order, which I'll get to  
3 in a second, to talk about these matters. In the absence of  
4 that, your Honor, we can, as objecting parties, as discovery  
5 parties, put together I think perhaps even a combined  
6 response to this in writing, and perhaps this matter can be  
7 set for a hearing next week or the debtor can proceed in  
8 writing with its request, which is probably the better  
9 procedural way to proceed. It could be heard on an expedited  
10 basis. We can get a response on an expedited basis. And,  
11 again, I will represent to the Court I will endeavor to get  
12 everyone on the objecting side on the phone so we can get you  
13 a combined response that we can lay out for you next week,  
14 but I can give you the short form version right now in about  
15 five minutes. What we have heard over today and what we've  
16 heard over the past 72 hours is a couple things. One, the  
17 city cannot meet, did not meet its May 6 discovery production  
18 deadline. As to water and sewer, as I said earlier, I won't  
19 repeat, they have not searched for nor have produced nor will  
20 produce water, sewer-related documents by May 6 or by  
21 tomorrow. Again, I believe they searched one custodian,  
22 produced 50 documents. We've heard now that the city cannot  
23 meet the June 27th fact witness discovery cutoff, which means  
24 they cannot meet the expert report deadline, which is June  
25 24. Now, granted, that's three days before that cutoff, but

1 the idea was that the bulk of fact discovery would be  
2 completed before experts can prepare their reports. Expert  
3 reports are based on the facts and the fact depositions. So  
4 a three-week -- two- to three-week delay in documents, a  
5 three-week delay in the fact discovery cutoff, that's five to  
6 six weeks. To the extent all dates are adjusted -- I don't  
7 speak for everyone here, but to the extent dates are  
8 adjusted, all dates should get bumped out five to six weeks  
9 to make this accommodation.

10 It's important to stress -- and I've been trying to  
11 stress it at least as of Monday -- that water, sewer and COPS  
12 and Syncora -- I'm not sure what to call you other than  
13 Syncora -- are very, very different. Water, sewer, \$6  
14 billion worth of bonds. You've got U.S. Bank as indenture  
15 trustee. You have three bond insurance companies. You have  
16 ad hoc committee of DWSD bondholders. And you can include,  
17 although in the courtroom today we have Oakland, Macomb, and  
18 Wayne Counties -- they have very specific water, sewer  
19 issues. They are related to our issues, the health, the  
20 viability of these systems. We have an economic interest.  
21 They have a political interest. They, too, have an economic  
22 interest in the viability of these systems. City proposes  
23 drastic changes in their plan to the bonds and to the systems  
24 stripping liens, lowering interest rates, subordinating debt.  
25 My issues -- I said this on Monday, but it bears repeating --



1 do not overlap perhaps even in the slightest with  
2 Mr. Hackney, with Mr. Marriott, half with Mr. Perez because  
3 he has a foot in both camps, but, again, I don't care about  
4 grand bargain. I don't care about DIA. I don't think the  
5 other DWSD parties care about that as it relates to their  
6 economic interest. I don't speak for them on that. I am  
7 making this point just to underscore that what Mr. Hertzberg  
8 said about limiting hours of depositions, limiting the number  
9 of depositions and witnesses is entirely unworkable.

10 Mr. Hackney and his colleagues have questions -- legitimate  
11 questions for Mr. Buckfire, for Mr. Malhotra, for Mr. Moore  
12 and for Mr. Orr entirely unrelated to water, sewer and vice  
13 versa. We cannot be expected, again, with my side having \$6  
14 billion at issue, to divide a seven-hour day and only to be  
15 able to call a witness once. We are happy to work together.  
16 We've worked together very well across the board. And I  
17 don't think anyone here has an objection to the lead  
18 questioner. That's how it's proceeded in every deposition,  
19 to my knowledge, both in eligibility and swaps. No one wants  
20 to plow the same row over and over again, but these various  
21 limitations, the one day, seven hour, cannot call twice, the  
22 30(b)(6), witness can only appear either for a fact witness  
23 or for a 30(b)(6), never the two shall meet, that does not  
24 work. As to limiting the number of witnesses, I'm not rising  
25 to speak to that. I have one. My list has one fact witness,

1 so that is not a battle that I am prepared to fight. Others  
2 may have issues with that. So I know Mr. Hackney has some  
3 words to say, perhaps others as well. To repeat, this should  
4 be the subject of a meet and confer. Absent that, the  
5 motions practice with the city filing the motion, endeavor to  
6 get a response within 36 hours from the objecting parties,  
7 and we can have a hearing on these modifications, but what  
8 we're hearing from the city is they can't meet these  
9 deadlines. The deadlines were tight to begin with, so if  
10 dates need to move out two to three weeks on document  
11 production and three weeks on facts, five- to six-week bump-  
12 out of all dates. Thank you.

13 MR. HACKNEY: I'll try to be brief and add to what  
14 Mr. Neal said rather than repeat it, your Honor, and first  
15 I'll apologize for pulling the fire alarm. I was getting  
16 tired of sitting next to Mr. Neal, but I -- you know, all  
17 levity aside, I'm going to check my frustration a little bit  
18 at the way the city has proceeded here at the pretrial  
19 conference. The issue -- there are issues that we have to  
20 figure out for you and amongst each other in order to bring  
21 order out of chaos with respect to all of these different  
22 witnesses and getting the testimony, integrating it with the  
23 document review. There's a lot that we have to do, but, your  
24 Honor, this is too complex a process to proceed by springing  
25 things as substantive as you can only have three witnesses at

1 a trial when you are people that relate to a billion four in  
2 debt that's proposed to be nearly wiped out or we will under  
3 no circumstances give you more than seven hours with any  
4 witness. You know, that's not the tone of practicality that  
5 will allow us to see our way through this, and so what I  
6 would suggest that we might be able to accomplish today, your  
7 Honor, is more modest, which is I think that we can work with  
8 liaison counsel to serve as representative of --  
9 representatives of creditor groups as a means of simplifying  
10 for the city who it needs to talk to and putting some burden  
11 on the creditors, for example, to go back and coordinate with  
12 their creditor classes and speak as a unified voice. And so  
13 I will tell you that we did a lot of that in connection with  
14 the swaps trial, and Mr. Neal is right. We did well at it,  
15 frankly, and I'm offering to do it again. I have no pride of  
16 authorship as to whether it's me or Mr. Perez or Mr.  
17 Marriott, but we can figure out who it is. And Mr. Neal has  
18 been serving in a de facto position with the DWSD, and so the  
19 idea of having a liaison counsel or even like at a deposition  
20 having a lead questioner model is the type of thing that is  
21 and can be efficient, but the city needs to work more  
22 proactively with us in order to thresh out some of these  
23 issues rather than coming into court hoping to catch us by  
24 surprise and see if they can get you to rule at the outset of  
25 a case where we haven't even gotten the documents about how

1 many witnesses we're going to get to have at trial. That's  
2 something that I think breeds a sense of unfairness, and so I  
3 think we need to proceed more cautiously and force people to  
4 try and collaborate and meet and confer and use the liaison  
5 counsel to do that.

6           The one extra thing that I wanted to say, your  
7 Honor, is that there is a certain irony, which is that when  
8 there is a tight schedule, one of the things that becomes  
9 very important is coordination, but sometimes you almost need  
10 a little time to get coordinated because I think what you're  
11 seeing with a lot of the witness lists are a lot of defensive  
12 lawyering by people because they're being -- they're doing  
13 the witness list at the outset before they have the  
14 documents, and so they're saying, "I don't want to be  
15 precluded from calling a witness later, but I don't know what  
16 they're going to testify to, so I'm going to put people on my  
17 list." Syncora is not going to call 37 witnesses at trial,  
18 and those witnesses are may call witnesses, so this is an  
19 effort to put out to the city these are the types of people  
20 that we think may have discoverable information and of whom  
21 we may seek to take depositions. What Mr. Hertzberg didn't  
22 mention to you is that many of the people on our witness list  
23 are under his control. There's only one Syncora witness on  
24 the Syncora witness list, so this was a way to articulate a  
25 number of different people that may be people that have

1 relevant information outside of the city's list. Threshing  
2 out who the key players are, who needs to be deposed, whose  
3 depositions ought to go in excess of seven hours, so on and  
4 so forth, is something that's going to take the parties  
5 working together and time to try and narrow the number of  
6 disputes. That's all.

7 THE COURT: Well, you didn't win the prize for  
8 naming the most witnesses.

9 MR. HACKNEY: I told --

10 THE COURT: That honor goes to Mr. Fischer.

11 MR. HACKNEY: I told Mr. Heiman that we were  
12 appropriately disappointed that we hadn't won that one, but,  
13 for example, we put -- I'll give you an example. We put, I  
14 believe, all of the City Council members, the present City  
15 Council members, on our witness list. I don't think that we  
16 will take all of their depositions. It's possible we could.  
17 We put that on there defensively because we're not sure how  
18 the post-emergence enforcement mechanisms are going to play  
19 out, so that's just an example where that's probably six  
20 names, your Honor, but I don't think it'll be six witnesses  
21 at trial, and I don't think it'll be six depositions. But I  
22 also don't think it was a bad idea for me to put those on as  
23 may call witnesses. I don't know how -- I mean I could have  
24 just left them off, but then we'd still be trying to suss out  
25 which of them we should notice and take their deposition, so

1     you end up in the same place, and it will ultimately be a  
2     practical place that's driven by the evidence at trial and  
3     what you need to make your case, so I would propose, your  
4     Honor, that we be less audacious than trying to decide if the  
5     Court is going to take a bus tour as part of the trial or,  
6     you know, how many witnesses exactly Syncora is going to get.  
7     We're going to decide that today. Rather, maybe we take a  
8     step back and say let's get some liaison counsel set up on  
9     behalf of the creditor constituencies. Let's have the city  
10    put somebody out front that understands that we have to be  
11    pragmatic and work together to get through this, and then  
12    let's develop an understanding of what the schedule should be  
13    going forward. Thank you, your Honor.

14               MR. FISCHER: Good afternoon, your Honor. Joe  
15    Fischer from Carson Fischer on behalf of Oakland County  
16    together with Jaye Quadrozzi.

17               THE COURT: Forty-five witnesses?

18               MR. FISCHER: He said 48. May I respond?

19               THE COURT: It's outrageous, Mr. Fischer.

20               MR. FISCHER: No. I think --

21               THE COURT: You should be ashamed of yourself.

22               MR. FISCHER: Respectfully --

23               THE COURT: It's bizarre. It undermines your  
24    credibility, which was otherwise unimpeachable before this  
25    Court before this, and I won't tolerate it. You're not going

1 to call that number of witnesses.

2 MR. FISCHER: And we don't --

3 THE COURT: You're just not.

4 MR. FISCHER: No. And we don't intend on doing so.

5 THE COURT: Then why did you list them?

6 MR. FISCHER: Your Honor, I think that Mr. Hackney  
7 really sort of hit upon it, and that is we had not had the  
8 benefit of discovery. It was more of a defensive move in  
9 order to make sure that we complied with your Honor's  
10 timeline, and I will indicate to the Court --

11 THE COURT: It wasn't an attempt on your part to  
12 intimidate this Court and the debtor?

13 MR. FISCHER: I have never tried to intimidate this  
14 Court, and I'll stand on my record with that. And as far as  
15 this debtor is concerned --

16 THE COURT: Well, then I invite you to file an  
17 amended witness list by tomorrow.

18 MR. FISCHER: Your Honor, we'll make a good faith  
19 effort at doing so, but may I --

20 THE COURT: You'll do it.

21 MR. FISCHER: Of course we will. Your Honor asked  
22 for it. We will do it. I'm accepting --

23 THE COURT: Now, what do you want to say?

24 MR. FISCHER: Well, I'd like to defer to Ms.  
25 Quadrozzi, but I think it has a lot to do with the discovery

1 issues. And before I leave the lectern, your Honor, we were  
2 not trying to be disrespectful of the Court.

3 MS. QUADROZZI: Your Honor, I just have one brief  
4 point that is in addition and not over the top because I do  
5 share in the comments that have been made by fellow counsel,  
6 but with respect to an effort to attempt to streamline, prior  
7 to serving our 30(b)(6) notice, I actually reached out to Mr.  
8 Irwin, got an e-mail back from him, but did not have a  
9 chance -- we did not connect. I now hear in front of you  
10 this morning that -- or this afternoon -- excuse me -- that  
11 they are intending to file a motion for a protective order.  
12 In addition to my reach-out before I served my request, my  
13 30(b)(6) notice, I reached out again and said, "Please talk  
14 to me about this. Let me know who you're going to call."  
15 Second time, third time. I haven't gotten any response, so  
16 it's difficult for me to think that they are going to come  
17 here and suggest that my 30(b)(6) categories are out of  
18 bounds without first reaching out and talking to me because  
19 certainly the one illustration that they gave your Honor  
20 today, to the extent that they misunderstood it -- and it  
21 sounds like they might have -- I'd be happy to talk with them  
22 about narrowing it specifically. We certainly are not in a  
23 situation where we want to waste any time. I will note that  
24 we were not in the eligibility hearing, so we haven't taken  
25 any depositions. We haven't examined any witnesses. We



1 certainly will attempt to get those transcripts, avoid  
2 duplication, and work with counsel, but it's got to be a two-  
3 way street, your Honor. Thank you.

4 THE COURT: All right. Well, let me just ask before  
5 any further comments by counsel, I like the idea of a  
6 committee that I'm going to call arbitrarily the discovery  
7 and trial efficiency committee to carry out the functions  
8 that Mr. Hackney has identified here on the condition that  
9 there will be a prompt convening of this committee and a  
10 resolution of your issues to the extent you can and a  
11 presentation to me of the issues to the extent you can't.  
12 I'm actually thinking of a date late next week. Anybody  
13 object to this? Can I leave it --

14 MR. HERTZBERG: I don't object at all. I'm just not  
15 around next week, but someone else can convene it.

16 THE COURT: Well, I'm going to let you all pick your  
17 representatives, however many you want, and you all pick your  
18 representatives, however many you want, but don't make it so  
19 large that it doesn't function on both sides. All right.  
20 I'll so order that. Now, given that, I'm willing to consider  
21 any other comments anyone would like to make, and then I have  
22 an additional agenda.

23 MR. BRATER: Thank you, your Honor. Randy Brater on  
24 behalf of Ambac. The only thing I would note is that Ambac's  
25 witness list had a number of people on it, but it was

1 identical to the city's witness list, and for the reasons  
2 identified by Mr. Neal and Mr. Hackney, we just -- that list  
3 is pretty general at this point without discovery. And, you  
4 know, once we take depositions, et cetera, we'll be able to  
5 hopefully narrow that, but we didn't want to be limited to  
6 simply how and why the city was calling their witnesses.

7 I just wanted -- and I apologize for somewhat  
8 backtracking, but I needed to confirm with Mr. Irwin that  
9 with respect to the discovery, Ambac also entered into an  
10 agreement with the city in terms of discovery that somewhat  
11 modified the Court's order on Monday. All the issues we  
12 talked about earlier we had a very -- we had a similar  
13 agreement with the city.

14 THE COURT: Okay.

15 MR. BRATER: But I'll just note that with respect to  
16 the city's interrogatories to Ambac, we agreed that they  
17 would respond to Interrogatory Number 11 that dealt with  
18 administrative claims. And for Ambac's responsibilities, we  
19 would provide one document to the city in response to Request  
20 Number 30 but that we would have no further obligation with  
21 respect to Request Number 4, 6, 14, and 37. We have an e-  
22 mail with Mr. Irwin that lays all this out. I just wanted to  
23 put it on the record so we didn't have to deal with any more  
24 paper. Thank you.

25 THE COURT: Thank you, sir.

1 MR. IRWIN: That is consistent with the city's  
2 understanding, your Honor.

3 THE COURT: Okay.

4 MR. KOHN: Your Honor, Samuel Kohn, Chadbourne &  
5 Parke, on behalf of Assured Guaranty. Mr. Neal said  
6 everything that we needed to say about DWSD. Just as a  
7 clarification, your Honor, about this committee, I just want  
8 to point out one issue as an example that could come back to  
9 your Honor.

10 THE COURT: Um-hmm.

11 MR. KOHN: Because they're interested in moving the  
12 deadline for fact discovery from June 27th until July 15th,  
13 before that there was a -- Number 18 in the fourth amended  
14 order was the deadline that parties would timely file a  
15 supplemental objection as a result of discovery. In other  
16 words, based on fact discovery, creditors had three weeks --  
17 close to three weeks to prepare those supplemental  
18 objections, your Honor.

19 THE COURT: I know.

20 MR. KOHN: And the second thing that I just wanted  
21 to say is that, you know, we were all working together until  
22 right before the alarm with Mr. Irwin on meet and confers and  
23 documents even though Mr. Irwin told us that with respect to  
24 the DWSD specific documents, he thinks that it could be two  
25 to three weeks or at least that, so we were still working

1 very consensually with them, and then we were just outright  
2 outraged. I know your Honor used that word, but I don't want  
3 to reuse it. That's all I wanted to say. Thank you, your  
4 Honor.

5 THE COURT: All right. Mr. Irwin, is that true?

6 MR. IRWIN: This has been mentioned several times  
7 that the city only searched one custodian for DWSD records.  
8 That is not -- it is true in the sense that there was an  
9 individual at DWSD through whom all of our inquiries went and  
10 on whom we relied to collect the documents that we produced.  
11 Yes, we had to claw the production back, and it's going out  
12 again, but there are many DWSD documents in our production.  
13 We do need to go back and do more work in this regard. That  
14 is absolutely true, but in part it turns on the ruling from  
15 Monday and our objection that was overruled as to the DWSD  
16 transaction, and so that reset the clock for us a little bit,  
17 and that's part of what we have offered to go back and do and  
18 work collaboratively with the DWSD bondholders and the  
19 counties to go back and make sure that we get that right.  
20 And part of my offer to them, which they have taken me up on,  
21 to send me a prioritized list of documents or reports or data  
22 that they would like right away, which, again, I have  
23 committed to do for them as with everyone else, to produce on  
24 a much faster track, how long it will take to search all the  
25 custodians -- and I've been provided with custodians that are

1 numerous that I think we're going to have to work through. I  
2 can't -- well, I can do anything given enough time and space,  
3 but the requests are a dozen, more than a dozen, 20 people to  
4 drain their computers and search all of their e-mail at DWSD.  
5 I would submit that the better way to proceed is for us to  
6 try to narrow those issues, and that's going to drive the  
7 time on all that.

8 THE COURT: All right. Thank you, sir.

9 MR. MONTGOMERY: Your Honor, Claude Montgomery for  
10 the Retiree Committee. Just two -- one observation and one  
11 question for the Court. The observation is, as you know, we  
12 are hoping very much that we're going to be on the city's  
13 side in the confirmation process, and so I would ask the  
14 Court to ask the debtor to invite us into their side for  
15 purposes of this conversation, although we may -- if the  
16 state doesn't do what we're hoping it's going to do, we may  
17 end up on the other side.

18 The second question, though, is perhaps more  
19 serious, your Honor, which is --

20 THE COURT: What's your prediction?

21 MR. MONTGOMERY: I'm a bad gambler, your Honor.

22 THE COURT: Strike that question.

23 MR. MONTGOMERY: I'm a bad gambler. The second  
24 question is whether or not either the city or the Court has  
25 had any opportunity to think what it's going to do with the

1 individual objectors, particularly those who are in our  
2 constituency as retirees who appear to be opposing our  
3 approach to the plan and how you're going to handle that. We  
4 would ask that consideration of that be part of this meet and  
5 confer process because although I haven't kept a tally, there  
6 appear to be a number of individual objections that have been  
7 filed.

8 THE COURT: Um-hmm, yes. I think at this point we  
9 have over 200, maybe even over 300 at this point, objections  
10 to confirmation from individual creditors. Now, I don't know  
11 if they're all retirees or not, but my thought there,  
12 although it hasn't been fully crystallized, was to give them  
13 the same kind of opportunity to present their objection to  
14 the Court in court as we did for eligibility, although  
15 because of the numbers, I may have to limit the invitation  
16 somehow.

17 MR. MONTGOMERY: Your Honor, I think that's a good  
18 idea, and I would suggest that you instruct the debtor and  
19 the other parties to just sort of think about how that might  
20 be effectively used as part of a total record on  
21 confirmation. Thank you.

22 THE COURT: Okay.

23 MR. PEREZ: Your Honor, this is Alfredo Perez on  
24 behalf of FGIC. This is a mundane matter, but in the fourth  
25 amended, there is a May 26 deadline for a couple of things,

1 and that's Memorial Day. I just want to either move it to  
2 the 27th or -- so just that everybody is on the same page.

3 THE COURT: I think that's automatic as a matter of  
4 law anyway, but sure.

5 MR. PEREZ: Okay.

6 THE COURT: Yeah. Okay. All right. What I want to  
7 do, frankly, at this point is take a ten-minute recess and  
8 ask you on each side to convene and nominate your selections  
9 for this committee because I want to work with them on how  
10 this is going to play out after that. Any objections? All  
11 right. We'll reconvene at five o'clock.

12 THE CLERK: All rise. Court is in recess.

13 (Recess at 4:49 p.m., until 5:01 p.m.)

14 THE CLERK: All rise. Court is in session. Please  
15 be seated. Calling Case Number 13-53846, City of Detroit,  
16 Michigan.

17 MR. CULLEN: Your Honor, we've discussed within  
18 ourselves and with the other side briefly over the break -- I  
19 think it is our predisposition -- and neither of them are  
20 here and know they're taking the black marble on this, but  
21 we're going to make our team on this a combination of either  
22 Mr. Shumaker or Mr. Stewart and Mr. Irwin. We figured it  
23 would be best to focus the responsibility in that way, and  
24 I'm going to -- as soon as I can get them in person. I'll  
25 figure out which one of those two will be part of that team

1 if that's okay with the Court.

2 THE COURT: That's fine. Would you let us know?  
3 And would you please put your appearance on the record,  
4 please?

5 MR. CULLEN: Oh, I'm sorry. May it please the  
6 Court, Thomas Cullen of Jones Day on behalf of the city.  
7 Sorry, your Honor.

8 MR. NEAL: Good afternoon again, your Honor. Guy  
9 Neal, Sidley Austin, National Public Finance Guarantee. As  
10 for the DWSD parties not including the counties, there'd be  
11 three representatives, myself, Guy Neal, for National, and  
12 then Bob or Robert Schwinger for Assured Guaranty and Paul  
13 Davidson for U.S. Bank as indenture trustee who would be  
14 representing -- well, as indenture trustee.

15 MR. HACKNEY: Sorry, your Honor. Stephen Hackney on  
16 behalf of Syncora. Your Honor, we've conferred, and for the  
17 COPs and the LTGO creditors, we would propose four  
18 representatives, which are myself, Mr. Perez, Mr. Marriott,  
19 and Mr. Randy Brater of the Arent Fox firm. He spoke earlier  
20 today. And then --

21 THE COURT: What was that last name, sir?

22 MR. HACKNEY: It was Brater; right?

23 MR. BRATER: Brater, B-r-a-t-e-r.

24 THE COURT: Thank you.

25 MR. HACKNEY: And, your Honor, Ms. Patek, who



1 represents some of the police and fire unions, mentioned to  
2 me that she will be objecting and would appreciate it if she  
3 could have almost like a ghosting role in terms of kind of  
4 being made aware of the issues that are -- she doesn't fit  
5 squarely within some of the --

6 THE COURT: Yeah. Okay.

7 MR. HACKNEY: -- groups we talked about. The only  
8 thing I was going to ask your Honor is I think this committee  
9 is a really good idea, and I view it as something that might  
10 be a means to driving consensus and helping the Court order  
11 things, but I guess I would say that we would want to make  
12 certain that any individual member of the committee might be  
13 able to take a position that was different from the  
14 committee. I just wanted to clarify that in case there's --  
15 you could see a situation where the DWSD folks might take a  
16 different position vis-a-vis --

17 THE COURT: Sure.

18 MR. HACKNEY: -- something, so thank you, your  
19 Honor.

20 THE COURT: All right. Is it reasonable to ask you  
21 to convene -- yes, sir.

22 MR. PEREZ: Your Honor, I think -- excuse me.  
23 Alfredo Perez. I think when we were outside we also  
24 indicated that one of the counties would also be  
25 participating in the committee.

1 MR. NEWMAN: Max Newman on behalf of Wayne County.  
2 It's my honor to nominate somebody else to this committee,  
3 which is Jaye Quadrozzi, who's representing Oakland County.

4 THE COURT: Okay. Thank you, ma'am. All right. Is  
5 it reasonable to ask this group -- oh, one more. Yes, sir.

6 MR. MONTGOMERY: As expected, no one invited us to  
7 play, and so that we would ask that this nominee --

8 THE COURT: That's what happens when you have one  
9 foot on each side.

10 MR. MONTGOMERY: That's true. That is clearly true.  
11 Jen Green for the Retirement Systems and Dan Barnowski for  
12 the Retiree Committee would be our participants in this  
13 process.

14 THE COURT: Okay. Anybody else? Okay. So my  
15 question remains is it reasonable to ask you to convene  
16 promptly and to report back to the Court at an adjourned  
17 status conference late next week on what you have been able  
18 to agree to and what you have not been able to agree to?

19 MR. NEAL: Yes, your Honor.

20 THE COURT: All right. Subject to the availability  
21 of a courtroom -- hold on one second -- I'm thinking of  
22 Thursday, the 22nd.

23 MR. NEAL: Very good, your Honor.

24 THE COURT: All right.

25 MR. HACKNEY: Your Honor, may I? There are

1 certainly a lot of obvious topics that we know to talk about  
2 and we will talk about. Are there any in particular that you  
3 would like to make sure that we do talk about? If there  
4 are --

5 THE COURT: I'm hesitant to add to your list.

6 MR. HACKNEY: Okay.

7 THE COURT: No. I think you all have to think about  
8 this issue of the number of witnesses, you know. To me  
9 that's sort of driving everything here --

10 MR. HACKNEY: Yeah.

11 THE COURT: -- so that's as much as I feel  
12 comfortable saying about that at this point.

13 MR. HACKNEY: Fair enough. Thank you.

14 THE COURT: Okay. One second, please. Oh, yes. I  
15 indicated in court the other day that I was in the process of  
16 reviewing the latest filed plan with a view towards trying to  
17 identify those pieces or parts of the plan that I thought  
18 needed clarification because I want to avoid wherever  
19 possible questions or litigation about what the plan means  
20 later. I have completed that review, and it has resulted in  
21 a four- or five-page list. I'm feeling like now is not the  
22 time to embark upon this list, and yet I don't want to go too  
23 long before I share it with you, so let's put it on the  
24 agenda for next Thursday as well. And in the process, maybe  
25 I'll try to figure out a way to distribute it appropriately,

1 which might facilitate our discussion, although I want to say  
2 to you now -- and I'll say it again next week -- this is not  
3 a list of questions that I want answers to on the spot by any  
4 means. These are -- this is just me highlighting questions  
5 for you to consider whether these are areas in your plan you  
6 want to clarify. It hardly matters to me what the  
7 clarifications are. It's your plan. But these are issues  
8 that I can see questions arising about. So when we go  
9 through the list, I'm not going to be asking for answers.  
10 That's not what the purpose of this is. Am I correct that  
11 not all of the exhibits are attached to the existing plan;  
12 right?

13 MR. BENNETT: That's correct, your Honor. Some of  
14 them --

15 THE COURT: When do you foresee those?

16 MR. BENNETT: I don't remember exactly when the  
17 deadline for the plan supplement is. One second. July 14th  
18 for the --

19 THE COURT: Okay. And I just -- in response to the  
20 earlier question about what I'd like the committee to  
21 consider, there is one thing. At our eligibility trial and I  
22 think also at the swaps hearing, the swaps compromise  
23 hearing, I imposed a time limit on each side of a certain  
24 number of minutes. I want you all to think about how that  
25 could work in the context of our plan confirmation trial.

1           MR. BENNETT: Would that apply to witness testimony  
2 as well as to argument or just to argument?

3           THE COURT: Everything.

4           MR. BENNETT: Everything.

5           THE COURT: That's lectern time. Did I see -- am I  
6 correct that in the legislation that the Michigan House is  
7 considering there is proposed a deadline for the entry of an  
8 order of confirmation of September 30th? Anybody know the  
9 answer to that?

10          MR. BENNETT: Your Honor, I believe that's correct  
11 and then a deadline of December 31st for the plan going  
12 effective, if I recall correctly.

13          MR. SCHNEIDER: Good afternoon, your Honor. Matthew  
14 Schneider on behalf of the state. I believe that's correct  
15 as well, but I'd be happy to look into that and more  
16 specifically get back with you.

17          THE COURT: Well, I feel compelled to comment that  
18 there are a gazillion things that could happen between now  
19 and September 30th, none of which we can predict, that would  
20 prevent us from actually entering an order on September 30th,  
21 and I would hate to have to deal with the consequences of  
22 failing to meet that deadline if it's in a piece of  
23 legislation because if it is, it would take another piece of  
24 legislation to extend it, and we all know where the  
25 legislature will be on October 1st, and it isn't in Lansing.

1 So I hope somehow someone will convey this message to the  
2 appropriate members of the legislature to suggest  
3 reconsideration of that and whether it's really necessary to  
4 have any deadline at all.

5 MR. SCHNEIDER: I will make sure --

6 THE COURT: If they want a deadline, okay, but  
7 September 30th may be unrealistic. Does anyone else want to  
8 join with me in this communication to our legislature?

9 MR. MONTGOMERY: Your Honor, if I may, I think the  
10 reason the legislature picked it is because it's actually --  
11 excuse me. Claude Montgomery. That date appears in the  
12 state contribution agreement. I think that's where the  
13 legislature got it from, and all they're doing is in that  
14 case trying to follow that. Your advice is still well-taken,  
15 however.

16 THE COURT: Right.

17 MR. HEIMAN: We will endeavor to convey it along  
18 with the Attorney General's Office.

19 MR. SCHNEIDER: I'll make sure that the leadership  
20 in both the House and the Senate are aware of this.

21 THE COURT: All right. Thank you. Anyone else want  
22 to bring up anything else today? Ma'am. We have two  
23 customers. Yes.

24 MS. DOLCOURT: Tamar Dolcourt of Foley & Lardner on  
25 behalf of the city. We are in the process of working with

1 Jones Day on a series of claim objections, and so --

2 THE COURT: Oh, yes, yes, yes. We were going to  
3 talk about that today, yes.

4 MS. DOLCOURT: We were going to talk about that  
5 today --

6 THE COURT: Thank you for stepping forward.

7 MS. DOLCOURT: -- and so I just wanted to bring it  
8 to your attention. What we would propose is starting with a  
9 monthly series of omnibus claim objection hearing dates to  
10 separate it from the issues. I see you've got a lot of  
11 issues every day, so I want to have a separate hearing. We  
12 were thinking of starting in mid- to late August. I  
13 understand the Court will be very busy in July, so I thought  
14 we'd --

15 THE COURT: Well, I'm going to be very busy in  
16 August.

17 MS. DOLCOURT: Probably true. So if August is  
18 convenient to the Court, maybe starting mid- to late August  
19 and then every month thereafter, have a set hearing date just  
20 for noticing purposes.

21 THE COURT: Well, if the purpose of the hearing is  
22 just to have a hearing date and just for the purpose of  
23 putting whatever settlements you've reached with those who  
24 you have objected to hearings with on the record or just for  
25 the purpose of adjourning whatever is set for that date in

1 August, that's fine, but it strikes me as unrealistic to  
2 actually have any substantive hearings on claims objections  
3 in August. Maybe September.

4 MS. DOLCOURT: Understood. We could start in  
5 September, whatever is --

6 THE COURT: Okay.

7 MS. DOLCOURT: -- more convenient for the Court.  
8 August was just sort of the first date that came to our mind.

9 THE COURT: All right. So I will work with Chris  
10 and with you on a series of dates.

11 MS. DOLCOURT: Thank you so much, your Honor. I  
12 appreciate it.

13 THE COURT: Okay. Mr. Gordon, you have something.

14 MR. GORDON: Thank you, your Honor. Thank you, your  
15 Honor. For the record, Robert Gordon of Clark Hill on behalf  
16 of the Retirement Systems. I just wanted to mention  
17 something that I think can probably hopefully be folded into  
18 a discussion at a later hearing, doesn't necessarily have to  
19 be addressed today, but I didn't want it to go by the wayside  
20 completely. At the last status conference we expressed some  
21 concerns with respect to how the scheduling order would work  
22 as to certain issues we had, and it sounds like the  
23 scheduling order will be discussed further at other times,  
24 but pursuant to that expression of concern at the last  
25 hearing, a stipulated order was entered by the Court last



1 week between the city and the parties that you described as  
2 having maybe one foot in the settlement camp and one foot not  
3 in the settlement camp yet. That stipulation in large part  
4 pushes off the time for those parties to begin to develop a  
5 record in the event that there may or may not be a cramdown  
6 process, and we can look at that again in June.

7           One issue that I had raised at the last hearing that  
8 still isn't really addressed by the stipulation is the  
9 following. There could be a scenario where come late June  
10 the funding issues have been properly resolved and it appears  
11 that the city is proceeding towards an alternative A plan and  
12 not a cramdown plan as to the semi-settled parties, and so  
13 those parties would not be anticipating a cramdown at that  
14 time. It is possible that the Retirement Systems and the  
15 Retiree Committee may learn for the very first time only on  
16 July 21 when the vote tabulation comes in three days before  
17 trial that either Class 10 and/or Class 11 has not voted in  
18 favor of the plan, that we're heading towards cramdown.  
19 We're still struggling then with when we would be perhaps  
20 calling certain witnesses to develop whatever record we need  
21 in that regard, and so, again, I don't think that's something  
22 we need to address necessarily today, but I didn't want to  
23 let it go too long without at least letting the Court know  
24 that that's what we're still working on.

25           THE COURT: No. I know. That's a concern.

1 MR. GORDON: Yes.

2 THE COURT: All right. Anybody else? All right.

3 Thank you. We're in recess.

4 MR. HACKNEY: Thank you.

5 THE CLERK: All rise. Court is adjourned.

6 (Proceedings concluded at 5:16 p.m.)

## INDEX

WITNESSES:

None

EXHIBITS:

None

I certify that the foregoing is a correct transcript from the sound recording of the proceedings in the above-entitled matter.

/s/ Lois Garrett

May 20, 2014

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Lois Garrett